A *FULL* and *CLEAR*

ANSWER

TO A

BOOK,

WRITTEN

By WILLIAM PETIT Esq;

Printed in the Year 1680

By which it appears,

That he hath *Mistaken* the *Meaning* of the *Histories* and *Records* he hath *Cited*, and *Misapplyed* them: And that he hath *Added to*, or *Taken from* them, or *left Unrecited* such *Words* & *Matters* as he thought would either *Advance*, or *Destroy* his *Assertion*.

With a True *Historical Account* of the *Famous COLLOQUIUM* or *PARLIAMENT*, 49 *Hen.* III.

And a *GLOSSARY*, Expounding some few Words used frequently in our Antient *RECORDS*, *LAWS* and *HISTORIANS*.

TOGETHER WITH

Some Animadversions upon a BOOK,

CALLED,

JANI ANGLORUM FACIES NOVA.

LONDON, Printed for *Samuel Lowndes*, over against *Exeter-Exchange* in the *Strand*. MDCLXXXI.

AN Advertiſement TO THE *Impartial* and *Judicious* READER.

IF I prove tedious to him, I muſt ſay, I could not help it. For I have made more Large Recitals

and Tranſlations of ſome Records *and* Hiſtories *then otherwiſe I would have done, being forced thereto, by the* Authors *often Fumbling, two* Records, *and* Different Parts *of* Hiſtorie *together, and making but one of them. By his* Partial Citations *and* Expoſitions; *By his* Taking In, *and* Leaving Out, *what he judged was* For, *or* Againſt *him; and By his* Publiſhing *only* Ends *and* Shreds *of* Records *and* Hiſtories, *where he found any thing, that did but* ſound like

like *what* he Thought *might maintain* his Aſſertion. *The* Records *I have uſed, are Faithfully Cited; and likewiſe the* Hiſtorians, *who are ſuch as lived in the* Times, *when the* Things *I* Vouch them for, were Acted, *or who are of the* Beſt Authority *or* Credit, *or ſuch as Lived very near the time of the* Things Done; *whoſe* Writings, *in very many things, do agree with the* Publick Records, *as to the* Matter *and* Time, *Though not to the* Form *and* Compoſure;

posure; *and This I Affirm from my own Collating, and Comparing of them.*

THE

THE BOOKSELLER TO THE READER.

Since the Printing *of this* Book, *I find many* Literal Miſtakes, *and an* Omiſſion *of ſome* few Moniſyllables, *which I think not worth an* ERRATA; *for the* Judicious Reader *will ſoon find out, and eaſily* Correct *the ſame: But amongſt*

amongſt many, theſe few following are the moſt Remarkable (viz.)

In the Citations *in the* Margin, *for* Eadem *Read* Eadmer. p. 15. l. 14. *Add* As *before the word* will. p. 97. l. 32. r. 12000. p. 293. l. 11. *after the word* Did, *add the word* Not.

THE

The Introduction.

MR. *Petyt* having produced Matter of Fact only for the Confirmation of his Aſſertion, my principal Deſign in this following Diſcourſe is to ſhew, That the Matter of Fact was not ſuch as he pretends and avers it to have been, and to diſcover the true meaning of our excellent Engliſh Records and Hiſtories, for the benefit of ſuch as intend underſtandingly to read them, and to detect his *Partial Citations* and *Concealments* of the greateſt parts of them, he hath made uſe of, which would have deſtroyed his Aſſertion, and to reſcue theſe Sacred things from *Groundleſs* and *Deſigning Interpretations*, I follow his own Method, and do affirm, P. 1.

1. That the *Commons* of *England Repreſented* by *Knights*, *Citizens*, and *Burgeſſes* in *Parliament*, were not introduced, nor were one of the Three *Eſtates* in *Parliament* before the 49th of *Henry* III. P. 1.

2. I *affirm*, That before that time, the *Body* of the *Commons* of *England*, or *Freemen* (as now underſtood, or as we now frequently call them) *collectively taken*, had not any *ſhare* P. 2.

or *votes* in making of Laws for the *Government* of the *Kingdom*, nor had any Communication in Affairs of State, unleſs they were repreſented by the *Tenents in Capite*.

These two Propoſitions are plainly laid down, and contradictory to what he confidently avers he hath proved.

P. 1, 2. To diſcover therefore and refute the unſoundneſs of his Aſſertions, and that what I affirm may appear to be true, I ſhall follow his courſe, and firſt by way of Anſwer to his, make good my ſecond Poſition, before I anſwer his firſt Aſſertion; and do hope to evince, P. 3. That he hath ſaid nothing to prove, That during the *Britiſh*, *Saxon*, and *Norman* Governments, the *Freemen* or *Commons* of *England*, as now called and diſtinguiſhed from the great Lords, were *Pars Eſſentialis & Conſtituens*, an Eſſential and Conſtituent part of the *Witena-Gemote*, Common Council, or Parliament in Thoſe Ages.

First,

First, *Under the* British *Government.*

TO prove this Assertion under the *British* Government, our Author cites part of the Answer of Pope *Eleutherius*, to the Epistle of King *Lucius*, who (as 'tis fabled) sent to him for the *Roman* Laws to Govern his Kingdom by; and says, That the Pope, who could not be ignorant of the Constitution and Frame of the *British* Polity, writes back to him, *Habetes penes vos in Regno utramque paginam, Ex illis Dei gratiâ per concilium Regni vestri sume legem, & per illam, Dei potentia vestrum rege Britanniæ regnum.* These words by the frequent Texts of Scripture that follow in the Answer should be thus rendred, *You have with you in your Kingdom both the Law and Gospel, out of them by the Grace of God, and Council of your Kingdom take a Law, and by that in the Power of God Rule your Kingdom of* Britain. What is this to either of your Assertions? You say little else upon this head. *What is this to the Commons being an Essential part of the* British *Councils or Government?* How doth it prove it? but besides the Author Sir *Henry Spelman* from whom he had this fragment, says, King *Lucius*'s Epistle is no where to be found, and that the pretended

P. 4.

Concil. Tom. 1. f. 31. 34. 35. The Answer to King *Lucius*'s Epittle a Forgery.

ed Answer to it is a Forgery, and worthily for these Reasons, First, *For that* Lucius *had no need to write to* Rome *to* Eleutherius *for the* Roman *Laws, when they were Established here before that time in* Britain *under the* Roman *President. For every* Colonie *of the* Romans *was but an Image of the Mother City with Like holy Rites, Like Courts, Laws*, &c. And the famous *Roman* Lawyer *Papinianus*, the chief Minister of Justice under *Geta* had his Tribunal at *York*. Tacitus *says the* Britains *affected* Roman *Language and Eloquence, Roman Habits, and frequent use of the Gown, Roman Pleasures, Diet*, &c. *built Temples and Courts of Justice; and 'tis most probable they also affected* Roman *Laws for which the Language and Rhetorick were most useful.* Secondly, For that this Answer ascribed to *Eleutherius* makes *Lucius* Monarch of *Britain*, and takes no notice of the *Roman* Dominion here. Thirdly. The word *Manutenere* used in it, is of *Norman* Extraction, and a legal word, brought hither by the *Normans* many hundred years after *Eleutherius* his being Pope. Fourthly, The places of Scripture cited in this Answer are taken out of the Translation of St. *Jerome*, who lived almost 200 years after *Eleutherius*. Immediately after this Citation, he adds, *But what the Laws and particular Government of the* Britains *were is very uncertain, because the Histories of their Country (if any were) could not be found*, &c. How then can this Author know that the Commons made an Essential part of their Government, when he knows not

Lipsius de Magnitud. Rom. lib. 1. c. 6.

Dio Cass. fol. 868.

In vita Agric. c. 21.

The *Britains* affect *Roman* Manners and Customs.

p. 4.

The Government of the *Britains* not certainly known by Mr. *Petyt*.

p. 5.

not what the Government was, which yet in the next page he ſays is certain and not to be denied that in the Elder time it was ſo, and for this Reaſon becauſe *Xiphilin* out of *Dio Caſſius* ſays in the Life of *Severus*, *Apud Britannos populus magnâ ex parte principatum tenet*: with the *Britains* the people had a great ſhare in the Government; be it ſo, yet 'tis very probable theſe were the great people, the Chief amongſt the *Britains*; and that too when the *Britiſh* Monarchy was baffled, diſtracted, and deſtroyed by the *Roman* Power. *Tacitus* informs us otherwiſe in the Life of *Agricola*, an hundred years before *Severus*; *Britanni olim regibus parebant* (ſays he) *nunc per principes factionibus & ſtudiis trahuntur.* In times paſt the *Britains* obeyed their Kings, and lived under Monarchy. Now they are drawn into Factions and Parties by their Chiefs and Great men; and by the time of *Severus* ſome of the Governments might degenerate into a Populacy or a Compound Government of Ariſtocracy and Democracy; but if ſo, it makes nothing for this Gentleman, *he having undertaken to prove that under our* Britiſh, Saxon, *and* Norman *Monarchies the people diſtinguiſhed from the Nobility, or as he calls them great Lords, were an Eſſential and Conſtituent part of their great Councils and Government.*

C. 12.

The State of the Queſtion, p. 3 & 7.

Secondly,

Secondly, *Under the* Saxon *Government.*

P. 6. FRom the *Britains* he proceeds to the *Saxons*, who he ſays when they made themſelves Maſter of the *Britiſh* Nation, brought their Country Laws with them; of which there can be no doubt (as I ſhall make it clear upon another occaſion (but not their popular Government) and brings the authority of *Tacitus* to prove that the Commons were an Eſſential and Conſtituent part of their Common-Council: *De minoribus rebus Principes conſultant, de majoribus omnes, ita tamen ut ea quoque quorum penes plebem arbitrium eſt, apud Principes pertractenter.* Of leſſer matters the Chief of the people Conſult, of the greater All; yet ſo as thoſe things of which the loweſt part of the people are Judges, are firſt treated of by the better ſort; and theſe were the Councils of the *German people in General*, not of the *Saxons*, which name is not to be found in all *Tacitus*; but what if it be granted, that thoſe *people* which were afterward called *Saxons*, were Governed by ſuch Councils? *was not this Government a Democracy?* and the people ſo far from not having their Votes and Shares in theſe Councils, as only they had Voices in them, and if any had any more power here than others, they were the Prieſts, who were

De mor. German. c. 11.

The Prieſts had the chief management of the German popular Governments.

were a sort of *Chairmen* in them, *Commanded silence*, and *had* a *Coercive power*, *Silentium per Sacerdotes, quibus tum & Coercendi jus est, imperatur.* In these Governments no man can doubt of the Suffrages of the people; but under such as he mentions, our Author would scarce be contented to live, where the Priests bare so much sway, where there were no *Cities*, or great *Towns*, but only scattered houses and habitations by Rivers, Fields, and Woods, made of Dirt, or Clay, Arms of Trees, and Stubble, where there was no *Literature*, especially amongst the people, nor scarce *Civility*, where there was no Cloathing but with Garments made of Beasts skins, no Food but Milk, Pulse, and Flesh, without Art or Cookery; where there was no Propriety in Lands, no Mony, no Work for Lawyers, as he will find, if he reads on in *Tacitus*, and the 6th Book of *Cæsar*'s *Commentaries*. ibid. In those Governments no Literature, no Civility, Cities, Towns, Propriety, &c.

These Councils which were held by the small popular Governments in old *Germany*, (for to such Governments they must be referred, seeing they frequently were convened on certain Days, either in the New or Full of the Moon, unless some fortuitous and sudden matter happened) are the Platform he mentions in the next page. *When he says the* Saxons *under a sole Christian Monarch still continued and kept their Antient Wittenagemotes or Parliaments, wherein they made Laws, and managed the great Affairs of King and Kingdom*, according to the Platform of their Ancestors; and to evidence this he pretends many instances might be given, but produ- ibid. p. 7. p. 7.

Spel. Concil. vol. 1. fo. 126.

ces only three or four: His first instance is in a Common Council, called by *Ethelbert*, which *Spelman* mentions thus, *Anno Dominicæ incarnationis* 605. Ethelbertus *Rex in fide Roboratus Catholicâ una cum* Berta *Regina filioque ipso* Eadbaldo *ac reverendissimo præsule* Augustino *Cæterisque optimatibus Terræ Solennitatem Natalis Domini Celebrant* Cantuariæ, *Convocato igitur ibidem Communi Concilio tam Cleri quam populi.* In the year of our Lord 605. King *Ethelbert* being confirmed in the Catholick Faith, together with his Queen *Berta*, and his Son *Eadbald*, and the most Reverend Bishop *Augustin*, and the other great men of the Land, did celebrate the Solemnity of the Nativity of the Lord at *Canterbury*, having assembled a Common Council there of the Clergy and People, or *Laity*, for so *Populus* signifies here, and always does when *Clerus* and *Populus* are only used together, and thus contra-distinguished; then they are Expressive of two different Estates or Conditions of Men or Christians, the *Clergy* and *Laity*, or *Secular men*, and those were *optimates terræ, the chief men of the Land*, as before expressed; neither was this Council held under a sole *Saxon* Monarch (*as he states his Assertion, and brings this first instance to prove, That the Commons were an Essential and Constituent part of the Common Councils under sole* Saxon *Monarchs*;) But under *Ethelbert* King of *Kent* only, and that but eight years after *Augustins* coming hither, and above Two hundred years before the seven Kingdoms were united into one Monarchy. The second

A great Council called by *Ethelbert*, A.D. 605.

Wide here in a great Council held by *Ethelbert*, King of *Kent*, A. D. 605.

cond and third instances being indeed but one and the same, he picks out of an idle Story in the additions too, or surplusage of the 35 Law of *Edward* the Confessor, and to be found in Sir *Henry Spelman* in the place he cites, *but suspected, and not approved by him.* I must recite the whole Tale, to let the Reader see what Instances he useth, and how he applies them; which is to be found in the following words in the Law before cited. *Ina Rex Anglorum qui Electus fuerit in Regem per Angelum, & qui primo obtinuit Monarchiam totius Regni hujus, post adventum Anglorum in Britanniam, primus enim Rex fuit Coronatus Anglorum & Britonum simul manentium in Britannia, post adventum Saxonum Germaniæ, cepit enim in uxorem suam Gualam nomine propter quam vocata est Wallia illa Terra, quæ quondam vocabatur Cambria; Bigamus enim fuit, cepit autem cum ultima uxore sua Cambriam & Cornubiam, & Coronam benedictam Britanniæ quæ fuit ultimo Cadwallado Regi Britanniæ, Et universi Angli qui tunc temporis extiterunt, uxores suas, ceperunt de Britonum genere, Britones uxores suas, de illustri sanguine & genere Anglorum hoc est de genere Saxonum.* **Hoc enim factum fuit per commune Consilium & assensum omnium Episcoporum & Principum Procerum Comitum, & omnium sapientum, senioru & populoru totius Regni, & per preceptum Regis Ine predicti.** *Multi vero Angli ceperunt uxores suas, de sanguine & genere Anglorum Germaniæ, & quidam Angli ceperunt uxores suas de sanguine & genere Scotorum, proceres vero Scotorum, & Scoti fere omnes, ceperunt uxores*

Lamb. fol. 148.

Sir *Hen. Spelman* had his Story out of that Auctuarie as appears by the Citation in his Margin.

Mr. *Petit* takes his instances from Parcels of an idle Story.

uxores ſuas de optimo genere & ſanguine Anglorum Germaniæ; Et ita fuerunt tunc Temporis per univerſum Regnum Duo in Carne una, & taliter conſtituit rectum conjugium (& Delevit fornicationem & immunditiem à regno) & recta judicia pro ſtabilitate Regni, & confirmatione populorum, benigna ſedulitate, & tali modo effecti fuerunt gens una, & populus unus per univerſum Regnum Britanniæ miſeratione Divina; Which Fictitious nonſenſe is thus tranſlated word for word; *Ina*, King of the *Engliſh*, which was elected King by an Angel, and who firſt obtained the Monarchy of this whole Kingdom, after the coming of the *Engliſh* into *Britain*, for he was the firſt Crowned King of the *Engliſh Britains*, living together in *Britain* after the coming of the *Saxons* of *Germany*; for he married *Guala* by name, from whom that Land was called *Wales*, which was ſometimes called *Cambria*; he was twice married, and had with his laſt Wife, *Wales*, *Cornwal*, and the Bleſſed Crown of *Britain*, which was *Cadwalladers* the laſt King of *Britain*. And all the Engliſh to a man took their Wives from the Race of *Britains*; and the *Britains* their Wives from the illuſtrious Blood and Stock of the *Engliſh*, that is, of the Stock of the *Saxons*. For this was done by the *Common Council and Aſſent of all the Biſhops, Princes, great Men, Earls, and of all the Wiſemen, Seniors, or Aldermen, and People of the whole Kingdom; and by the command of* King Ina *aforeſaid*. But many of the *Engliſh* married into the Blood and Race of the *Engliſh* of *Germany*, and ſome

The Fabulous Story of King *Ina*,

and of the grand League of the *Britains*, *Scots*, and *Picts*, the Author mentions, p. 8, 9.

ſome *Engliſh* took their Wives from the *Blood* and *Stock* of the *Scots*, but the *Great men* of the *Scots*, and almoſt all the *Scots* took their Wives from the beſt Stock and Blood of the *Engliſh* of *Germany*; and ſo there were at that time through the whole Kingdom two in one Fleſh, and thus he conſtituted true Wedlock (and extirpated Fornication and Uncleanneſs out of the Kingdom) and right Judgments, for the ſtability of the Kingdom, and Confirmation of the people, by a kind Care and Diligence, *and ſo they were made one Nation, and one People through the whole Kingdom of* Britain *by* Divine Mercy. This whole Story is very idle, (nor ſhould I have much taken notice of it, but to let the World ſee what Hiſtories he Trades in.) Firſt here is King *Ina* elected by an Angel, who is bound to believe that? Then *Ina* who was King only of the *Weſt-Saxons*, is here ſaid to be Monarch of this whole Kingdom, and firſt Crowned King of the *Engliſh* and *Britains*; a meer Invention: It appears not to be ſo in any Hiſtorian; *Geofrey* of *Monmouth*, *Caradac* of *Lancarvan*, *Humfrid Lluid*, and *David Powel* the three famous *Britiſh Hiſtorians*, are either ſilent in this matter, Judge it to be ſuſpected, or affirm *Ina* to be only King of the *Weſt Saxons*; next 'tis here ſaid he married *Guala*, Daughter to *Cadwallader*, who was his laſt Wife, from whom *Wales* had it's name, and had with her as by inheritance, *Wales*, *Cornwal*, and the *Bleſſed Crown of Britain*; a direct Forgery. For firſt, to let *Guala* paſs (whoſe very exiſtence

Wales had not it's name from *Guala*.

Descript. of *Wales*, p. 2.

istence *H. Lluid* judgeth to be a Fiction) *Wales* never had its name from her, but from the *Saxon*, *Wealh*, which signifies a Stranger; And both the *Britains* and their Language being Strange to the *Saxons*, they called them *Wealhs*, or Strangers, having driven them into those parts of *Britain*, now called *Wales* and *Cornwal*, as several of our best *British* and *English* Historians inform us.

Sum. in Gloss. in verbo Wallicus.

But from the *Saxon* word *Wealh*.

H. Lluid, *D. Powel*, *W. Lambard*, and Mr. *Camden*.

Secondly, *Ina* began his Reign *An. Dom.* 689. and was neither King of *Britain*, or *Wales*; For at that time [1] *Ethelred* the Son of *Penda* was King of *Mercia*, and after him *Cenred*; [2] *Alfred* or *Ealdfrith*, was King of *Northumberland*. [3] *Withred* King of *Kent*. And in the year 710 *Ina* and his Kinsman *Nun* fought with *Gerent* King of *Wales*. And besides these instances all our Historians agree, That [5] *Egbert*, who began his Reign, *An. Dom.* 800, 73 years after the death of *Ina*, was our first *Saxon* Monarch; The *fictitious nonsense* of the *Intermarriages* between the *British*, *English*, and *Scots*, is not worthy any serious mans notice; and yet this Gentleman calls them a *Grand League* and *Union* between the *Britains*, *Saxons*, and *Picts*, and grounds his third *Instance* upon it, saying, That Grand League and Union was concluded and confirmed, *per commune Concilium & assensum omnium Episcoporum Procerum, Comitum, & omnium Sapientum seniorum & populorum per præceptum Regis Inæ.* The very words he hath taken out of the *Body* of this *Fable* to serve his purpose, which he cites both in this

Saxon Annals and Florent. Wigorn. in that year.
1 *Saxon* Annals, A. D. 704.
2 ibid. A. D. 705. *Bedes.* Eccl. histor. f. 345. 347.
3 *Sax.* Ann. A. D. 694. 625.
4 ibid. A. D. 710.
5 ibid. A. D. 800.

The intermarriages of the *British*, *English*, & *Scots*, which Mr. *Petyt* calls the Great Union, are fictitious Nonsense. p. 8, 9.

this and the forgoing Inſtance. And that he might the better make two inſtances out of one, and *Deceive* his *Reader*, he cites *Bede*'s *Eccleſiaſtick Hiſtory*, lib. 1. for the Report of this League and Union, where, if he finds it, he hath better luck than I have. Now what follows, but that if this Story be idle and fabulous, it would be as idle a thing for any man to think, there was ever ſo grave, ſo ſolemn an Aſſembly convened, to contrive, frame and ordain it: And the truth is, this Gentleman, if he had pleaſed, might have ſeen this ſame Council rejected as it were by his own Author Sir *Henry Spelman*, *De ſecundo ſeu ultimo hoc conjugio Inæ Regis*, &c. concerning this ſecond or laſt Marriage of *Ina* King of the *Weſt-Saxons* (ſaith he) with *Guala* the pretended Daughter of *Cadwallader* King of the *Britains*, and from thence the name of *Cambria* being changed into *Wales*, I find no mention of it in any approved Author, or that *Ina* had any * other Wife than *Ethelburg*, which was certainly his laſt, and ſhe as appears by her name a *Saxon*; for when he at *Rome* took upon him the Habit of a *Monk*, ſhe was made a Nun, and at laſt *Abbeſs* of *Barking*, in which Habits they both died; and adds further, that for the Time and Authority of this Council, he could ſay nothing. And I do affirm, That of the many Councils collected in this Volume by him cited, there is not the word *populus* to be found either in the Title, Preface, or Body of any of them, except onely in this ſpurious one, or any thing that tends towards the proof

p. 8.

Concil. vol. 1. fol. 220.

The Tale of *Guala* not allowed by Sir *Hen. Spelman.*

* See *Monaſt. Angl.* vol. 1. f. 14. n. 40. to the ſame purpoſe.

King *Ina* and his laſt Wife, *Ethelburg* both died in Monaſtick habits.

Nota.

proof of the *Commons* of those times to have had any share of making Laws in those Councils. The fourth *Instance* he hath out of the *British Antiquities*, A. D. 905. *Plegmundus Cantuarienſis Archiepiſcopus una cum Rege magnifico cognominato Edwardo ſeniore*, **Concilium magnum Epiſcoporum, Abbatum, fidelium, Procerum, populorum in Provincia Weſtſaxonum Convocant**, &c. *Unde ſalubriter conſtitutum eſt, in hâc Synodo, ut pro duobus Epiſcopis, quorum unus Wintoniæ, alter Sireburniæ ſedem habuit, Quinque crearentur Antiſtites, ne grex Domini paſtorum curâ orbatus, Luporum Laniena & voracitati ſubjicerentur.* That is in the year of our Lord 905. *Plegmund* Archbiſhop of *Canterbury*, together with the magnificent King *Edward*, ſurnamed the *Elder*, called a great *Council*, of the *Biſhops*, *Abbots*, *Tenants* in *Capite* or *Military Service*, *Noblemen* and *People* in the Province of the *Weſt-Saxons*, when it was wholeſomly ordained in this *Synod*, That inſtead of two *Biſhops*, one whereof had his Seat at *Wincheſter*, the other at *Sherborn*, there ſhould be *Five* created, leaſt the *Flock* of the *Lord* being without *Paſtors*, ſhould become a prey to voracious and devouring Wolves; The occaſion of this Council, as 'tis ſtoried, was a chiding and threatning Letter from Pope *Formoſus* to King *Edward*, That if there were not Biſhops appointed in ſuch places as there had been formerly, both he and his ſhould be ſubject to his *Malediction*. *Qua de cauſa* (ſays the *British Antiquities* in the ſame Folio from whence this *Inſtance* is taken, N. 30.) **Edwardus**

p. 9. fol. 75.

A great Council, A. D. 905. *procerum & populorum.*

Why the word *Fidelium* is thus turned; ſee *Gloſſar.*

Vid. *Monaſt. Angl.* vol. 1. f. 220. col. 2.

dus Rex Synodum prædictam Nobilium Anglorum congregavit cui præsidebat Plegmundus. For which cause (to wit, as 'tis there said for fear the Pope should curse him and his Subjects) King *Edward* called the foresaid *Synod* of *English Nobility*, wherein *Plegmund* presided; Here his own Author tells us in few words, the meaning of the long Title of this *Synod*, which just before he had mentioned, *viz.* that the *Bishops*, *Abbots*, **Fideles**, *Proceres*, & **Populus**, were all **Nobiles**, **Noblemen**, That is the *Ecclesiasticks* and *Laics*, or the *Bishops*, and *Lay-Nobility*, will be made more evident in this Discourse hereafter, and not the *Vulgus*, *Commons*, or ordinary sort of people. And to this effect *Malmsbury*, the Manuscript in the *Bodleian* Library cited by *Dugdale*, and the MS. in the Treasury of the Records and Evidences of the Church of *Canterbury*, cited by Sir *Hen. Spelman*, all report of this very Council, That *Edwardus Rex congregavit Synodum Senatorum gentis Anglorum cui præsidebat Plegmundus*, &c. That King *Edward* convened a *Synod* of the *Senators*, (in *Saxon* the *Aldermen*) of the *English* Nation, That is, such as were usually called to such Councils, which were only the *Nobiles* and great Men, for ought yet appears from this Instance. But further, all these Authors say, this Synod was called upon a Letter the King received from Pope *Formosus* in the year 905. There was but one Pope *Formosus*, and he died *December* 14. 895. ten years before this Synod is said to be called, and so perhaps there was

Populus interpreted by the Relator, and in the Relation of the same Council.

De gest. Reg. fol. 26. a. n. 30, 40.

Monast. Angl. vol. 1. fol. 220. col. 2. n. 10.

Concil. vol. 1. fol. 387.

Barls and great Officers of the Kingdom.

Onuphr. Chron. Pontif. Rom. fol. 27.

'Tis probable there was no such Council, A. D. 905.

was never such a Letter written, nor such a Synod called, and consequently no such Title of a Synod. For all these Authors (to whom I appeal) report nothing else done in this Synod, then making or naming five Bishops, as is above related; Though our Author affirms there were several Laws then made, which if he can, he ought to make good, to save his Credit. p. 10.

After these Instances, he says, *William of Malmsbury*, calls a *Saxon Wittena-Gemote*, * *Generalis Senatus & populi conventus.* There is no heed to be taken how our old Monks and Historians stiled the *Saxon Wittena-Gemotes*, or their great & *Common Councils*, for the same Authors expressed them some time one way, some time another; nor were they ever exact and curious in observing and noting the *Title* or the *Constituent parts* or *Members* of them: our Author himself hath reckoned up above 40 Denominations of the *Saxon Wittena-Gemotes*, or great *Councils* and *Parliaments*, and might have given us many more; and if he will frame an Argument from the Appellations of them, it must be against himself; for amongst those he hath mustered together, there are not above two or three he can pretend to make use of, and they, truly understood, signifie nothing to his purpose; all the other are directly against him; as the Reader may note if he please.

* De gest. Reg. lib. 3. fol. 56. a. n. 30.

No heed to be taken how the old Monks and Historians stiled a *Saxon Wittena-Gemote.*

As appears by his own shewing. p. 97.

p. 10. vid. Gloss. far.

To this he adds the Description of a *Folkmote* or Convention of the people, out of Sir *Hen. Spelman*, *Conceals the Title* of it, and imposeth it upon his Readers as a *Wittena-Ge-*

Gloss. fol. 261. col. 1. p. 10. *supra.*

mote

mote, a Convention of the Nobles or Wisemen. This being the same with the *English Saxons*, That a Parliament is with us, and called at the *Will* of the *King* in *Contingent Difficulties*, or for making of Laws, whenas the *Folk-mote* was at least *annual*, and met upon the same certain Business. So much of the Description, as he useth, runs thus, The *Chief* of the *Kingdom met*, as well *Bishops* as *Magistrates*, and *Free-men*, they consult of the Common safety, of Peace and War, and Promoting the Common profit or Benefit. He leaves out of this Description the great Design of this *Folk-mote*, which was to Swear Fealty or Fidelity to the King, to serve him faithfully, and defend all his Rights against his Enemies and Strangers; and picks out of it what he thought would be most for his purpose. From these Fragments, and doubtful Expressions (of which his Instances consist) *It is apparent*, he says, *and past all contradiction, that the Commons in those Ages were an Essential part of the Ligislative Power in making and ordaining Laws.*

See *Folk-mote* in the *Glossar.*

Ll. Gul. 1. c. 52. Ll. Edw. c. 35. in Auctar.

p. 12.

We have many of the *Saxon Laws* extant made during the *Reigns* of several of our *Saxon Monarchs*; in the Prefaces whereof, we are told, by what *Authority*, what *sort* of *People*, and by whose advice they were made. Why did not this Gentleman raise his Proofs from hence? Why did he leave the Kings Highway and walk in by-paths? to find and cull out some *slight Sentences* and *careless Expressions* that sound like something he would assert, and leave all the substantial and valuable In-

The Prefaces of the *Saxon* Laws declare what sort of people were the Constituent parts of their *Witenagemotes*.

ſtances behind him which are contrary to his Aſſertion. What I find in the *Saxon* Laws, I ſhall briefly recite in oppoſition to what he maintains.

Saxon Annals in thoſe years, *Lamb. Saxon Laws*, fol. 1.

Firſt, *Ina* who began his Reign *An. Dom.* 689. and ended it 728. in the Preface to his Laws ſays, *I* Ina *by the Grace or Gift of God, King of the* Weſt-Saxons, *with the Advice and Inſtruction of my Father* Kenred *and* Hedde *my* Biſhop, *and* Erchenwold *my* Biſhop, *and all mine* Aldermen, *and* Tham Yldertam Witan Minre Theod, *the principal or chief Senators or Wiſemen of my Nation, and alſo the great Aſſembly of Gods Servants* (the Clergy then ſo called) *meditating the Health of our Souls, and upon the Eſtate or Eſtabliſhment of our Kingdom, have eſtabliſhed Right* * *Laws, and Right Government through our Nation.*

* 'Tis in the *Saxon*, *Æw Nuptiæ*, but ſeeing there is no Law for Marriages amongſt theſe, I took it to be miſprinted for *Æ Leges*, and have ſo tranſlated it.

(a) *Lamb.* fol. 22. *Ælfred* began his Reign, A.D. 871.

Ibid. fol. 36.

[a] *Ælfred* after him, by the advice and aſſiſtance of his Wiſemen *Mid Witena Getheate*, ſurveyed all the Laws of *Ina*, *Offe*, and *Ethelbert*, and ſuch as he liked, he ordered to be obſerved, and others he cauſed to be laid aſide, and then ſhew them to all his *Wites*, *Noble*, or *Wiſmen*, who liked they ſhould be obſerved. Alſo in the League between him and *Gutbrun*, it is thus recorded, *This is the Peace that* Ælfrid *King*, *and* Guthrun *King*, *and all the* Engliſh Wites, *and thoſe of the* Eaſt-Angles *have declared.*

The

The *Constitutions* between *Edward* the Elder, and *Guthrun*, were approved by the *Wites* or *Wisemen* on both sides. Ibid. fol. 41. He began his Reign, A. D. 900.

Æthelstan made his *Laws* in the *Micel Synod* at *Greatan-Leage*, and there was *Wulfhelm* his Archbishop, all his *Optimates*, *Noblemen*, *Wites*, or *Wisemen*, by him Convened. Ibid. fol. 53. He began his Reign, A. D. 924.

King *Edmund* deliberated and made his *Laws* by the advice of his *Wites* or *Wisemen*, both Ecclesiastick and Laics. Ibid. fol. 58. He began his Reign, A. D. 940.

King *Edgar* ordained his *Laws*, with the advice of his Wites or Wisemen only. Ibid. fol. 62. He began his Reign, A.D. 959.

King *Ethelred* and his Wites made his Laws only. Ibid. fol. 88. A. D. 979.

King *Cnute* or *Canute* made his *Ecclesiastick* and *Secular Laws* by the advice of his *Wisemen* or *Wites* onely. Ibid. fol. 97 & 107. He began his Reign, A. D. 1016.

Besides these, I shall present the Reader out of History with some other of the great *Councils* or *Witena-Gemotes* in the *Saxons* time, by which he may understand whether 'tis probable they consisted of *Nobles* and *Commons*, or *Nobles* onely. From History 'tis clear of what people the *Witena-Gemotes* consisted.

Withlaf King of *Mercia* signed his large Donation to *Croyland* Abby, before the *Bishops* and *Great Noblemen* of all *England*, who met at *London*, *An. Dom.* 833. to consider Ingulph's Hist. fol. 488. n. 30. *Withlaf* was a Tributary, and under the Power of *Egbert*, *Dominus ejus*, ibid. n. 50.

sider how to prevent the *Danish* Piracies.

He was Tributary to *Elelwolph*. Ibid. b. n. 40. ibid. 489. a. n. 30. Ibid. 490. a. n. 20. 50.

Bertulph King of *Mercia* his Successor confirmed and enlarged that *Donation* before the *Bishops* and *Nobles* of his whole *Kingdom*, being the *Common Council* of his Kingdom with the consent of that whole Council, *A. D.* 851.

Ibid. fol. 497. a. n. 40. 50.

Note who were *Magnates Regni*.

Edred King of all *England*, gave the *Monastery* of *Croyland* to Abbat *Turketul*, and his Monks, by his Charter dated, *In Festo Nativitatis B.M. Virginis An. Dom.* 948. **Cum universi magnates Regni per Regium Edictum Summoniti, tam Archi-Episcopi, & Episcopi & Abbates, quam ceteri totius Regni proceres & optimates Londoniis Convenissent ad tractandum de negotiis publicis totius Regni.** That is in the Feast of the *Nativity* of *Blessed Mary* the *Virgin* in the year of our Lord 948, when as all the *Great Men* of the *Kingdom*, were summoned by the *Kings Edict*, as well the *Arch-Bishops*, *Bishops*, and *Abbats*, as other *Noble* and *chiefest Men* of the whole Kingdom, and met at *London* to treat of the publick Business of the whole Kingdom.

Totius Regni proceres & optimates.

No Commons to be found in the *Saxon* great Councils or *Witena-Gemotes*. Nor any that Represented them.

Where are the *Commons* to be found in any of these **Great Councils**, or **Witten-Gemotes**, or any that Represented them? Here are only mentioned **Arch-Bishops, Bishops, Abbats, Aldermen, Wites, Great Men, and Chiefest Men,**

Noble

Noble-Men. These were all the orders of Men that were Constituent parts of these **Great Councils** or **Gemotes.** And if the **Commons**, as now taken and understood, ever were Members of them, they must be comprehended amongst the *Wites* or *Sapientes* the *Wisemen*; But that it cannot probably be so, I shall note:

The Commons not comprehended amongst the *Wites* or *Sapientes* in the *Saxon* Councils.

First, That most of the *Saxon Laws* in their Prefaces are said to be made, and ordained by their Kings, with the advice and assistance of their *Wites* or *Wisemen* simply, without mentioning any particular *Orders* of *Men* whatsoever. And when any *Ranks* or *Degrees* of Men are particularly mentioned, they are only **Arch-Bishops, Bishops, Aldermen, Great Men, Wites, Chiefmen, Noble-men**, as before rehearsed, both **Ecclesiastic and Laic.**

Secondly, I shall Note, that it cannot be denied but in every one of these **Witena-Gemotes, Wicel Synods, Wicel Gemotes**, or **Great Councils**, where the *Laws* are said to be made onely by the *King* and *Wites* or *Sapientes*, without particularizing any Degres of Persons, the *Bishops*, *Abbats*, and *Great Clergy-men*, *Aldermen*, and *Gereves*, were there at the making of them; and also the honorary *Thegnes* or *Thanes*, and the *Judges*, if any there were of the higher Classe, other then *Bishops*, *Aldermen*, and *Gereves* or *Prepositi*.

And, *Thirdly*, I ſhall Note, that it follows from thence, that theſe all *jointly* were the **Sapientes**, where there are onely **Wites** or **Sapientes** in general named, without reciting any particular Orders or Degrees of Men.

See *Sapientes* in the Gloſſary.

This is clear of it ſelf, yet for the greater ſatisfaction of any that can doubt of it, I ſhall in the **Gloſſary** give many particular Examples of the meaning of **Wita**, **Witan**, **Sapientes**, &c. out of the *Saxon Laws*, and our approved ancient Authors, by which it will manifeſtly appear, That the **Commons**, eſpecially as now taken and underſtood, cannot be comprehended under thoſe Words.

Yet notwithſtanding what is here, and will be further cleared and proved in the Gloſſary, by giving the true meaning of the Words *Witan*, *Wites*, or *Sapientes*, That they in the *Saxon Witena-Gemotes*, were onely *Arch-Biſhops*, *Biſhops*, *Maſſe-Thegnes*, or *Digniſi'd* and *Great Clergy-men*, *Aldermen*, or *Comites Kings-Gereves* or *Prepoſiti*, *Kings-Thegns*, *Thanes*, or *Miniſters*, his *Counſellors*, *Judges*, or *Magiſtrates*. If this Gentleman can ſhew from good Authority (better than any he hath yet produced) That any of the **Commons** Sate in theſe *Great Councils*, at leaſt to **Repreſent** the **Body** of the **Commons** of the **Saxons**, I will ſubmit, and yield, That during the *Britiſh* and *Saxon* Governments, the *Freemen* or *Commons* of *England*,

See vit. *Ælfred*, lib. 2. in the Epiloge fol. 124.

England, as now called and distinguished from the *Great Lords*, were an essential Constituent part of the *Witena-Gemotes* or *Common Councils* of those Ages; as this Gentleman avers, and labours to prove by such Arguments, as I hope I have fully answered.

William the *Conqueror*.

FRom the *Saxons* we proceed to the *Normans*, where I find this Gentleman, as indeed there are many more, mightily possessed with the **Lenity** of *William* the *Conqueror*, for such he must be notwithstanding what is said by him, That he disown'd his Conquest, or rather submitted his Government and Scepter to the *Saxon* Law, *and from this or nothing, he infers the Commons to be an Essential part of the great Councils, but with what consequence the Reader is to judge*; however I will examin the easiness and kindness of **William** in denying the length of his Sword, and the Arguments he brings to confirm his opinion; I leave his ridiculous notation of the word *Conquestor*, and pass to the Reasons for his Opinion.

P. 17, 18, 19, 20, 21, 22, *&c.*

William the First obtained this Land by Conquest, and Governed it accordingly.

First he says 'tis recorded in *Domesday* Book, that *King William* had certain Lands in Demesne, the Lands which were in the hands

p. 23.

Can any man forfeit his Lands to a Stranger, a Conqueror that could not pretend Title but by Violence and Conqueſt.

of *King Edward*, and intituled, **Terre Edwardi Regis**, and other Lands which were forfeited by him, by thoſe who took part with **Harold**, intituled **Terre Regis**. This he hath out of Sir *John Davis*'s *Iriſh Reports*, fol. 41. a. b. And it is a great miſtake; for *there is no ſuch Title in that Book as* **Terre Regis Edwardi**; Of **Terre Regis** there is, firſt in every County in the top of the Leaves, which were the *Lands* of the *Conqueror*; for the truth of this I appeal to the Books. Here alſo he affirms *King William* kept the Lands of *King Edward* in his hands or own uſe, as *Edward* had done before him, which is as true as the other; for **Roger Earl of Shrewsbury**, as *Earl* and *Governor* of *Shropſhire*, had many houſes in *Shrewsbury*, and 47 Berwites (Hamlets or Villages) that belonged to the County, beſides very many other Lands, a great part of the County which *Rex Edwardus tenebat*, King *Edward* held. **Hugo de Port** had many Lands which were **King Edwards** in *Hantſcire*, and many others through the whole Book of *Domeſday*, to which again I appeal.

☞ No ſuch Title in *Domeſday* Book as *Terræ Regis Edwardi*.

Vide *Domeſday Scyropſhire terra Omitis.*

Hantſcire Terra Hugon. de Port in Fordringbridge Hundr. Domeſday, fol. 44. b.

But if all this were true, how doth it prove *William* **the Conqueror**, or his Aſſertion.

But his huge Argument is the **Famoſe Legend**, and Trite *Fable* of **Edwin of Sharnborn**, told ſays *Camden*, by all ſuch as would have *William* to have poſſeſſed *England* by *Fact* and *Bargain* with the People,

Britain, fol. 350 The *Legend* of *Edwin of Sharnburn.*

and

and not by *Right* of *War*, or the *Sword*. The Story as he hath it here, and as Sir *Edward Coke* often, Sir *John Davis*, and others have it, is thus. **Edwin** of **Sharnborn**, who had loſt his Eſtate at *Sharnborn* by the Conqueſt, and being given to **William de Warrenna**, came before the **Conqueror** and Pleaded, that he never was againſt the *King*, either before, or after he came in, and by the *Kings* order had his Eſtate again; Sir *William Dugdale* in the firſt Tome of his *Baronage*, hath this Story otherwiſe, and ſays, that notwithſtanding the Kings Mandate, all he could get was to become Tenant to *Warren*, and *William de Albins* of part of his own Land, under certain Services, and he is there called *Edwin the Dane*, and this (if any) is moſt likely to be true, being taken out of the Book ſometime belonging to the Family of the *Sharnborns*. Here we ſee he applyed himſelf to *William*, but got not the Propriety of his Eſtate; what he obtained was but to hold it from others; and this was then a common practice, as *Bracton* and *Fleta*, two of our moſt ancient Lawyers, and one of them at leaſt a Judge, do inform us. That at the time of the Conqueſt, there were *Freemen*, that held their Poſſeſſions *Freely*, by *Free Services* and *Free Cuſtoms*; and when they were thrown out of them, afterwards returning to them, received their own, and the very ſame Tenements or Poſſeſſions, to hold in Villanage by performing Servile works, but ſuch as were certain and nominated; to this may be added, what *Mat. Paris* ſays, that King

Fol. 118. col. 1. out of the Book of the Family of *Sharnborn*.

Bracton lib. 1. c. 11. n. 1. *Fleta* lib. 1. c. 8. n. 2.

How the *Saxons* held their Lands both before and after the Conqueſt.

fol. 6. n. 10.

King *William* gave liberally to such as were with him in the **Battel** of **Hastings**, when he Conquered *England*; and that little which was left, he put under the Yoak of perpetual Servitude: yet further, as to this particular Report of **Sharnborn**, there could be no such thing, for his name is not to be found as any Proprietor in *Norforlk*, or in *Sharnborn* in *Domesday Book*, or the Conquerors Survey, and the Owners of *Sharnborn*, which are there only to be found, are *William de Warrenna* (from whom this Story says it was restored to *Edwin*) *Odo* Bishop of *Bajeux* *Bernerius Arbalistarius* and *William de Pertenai*, whence it is evident, that *Warren* and others were possessed of these Lands in the 20th of the Conqueror, not long before he died, and no *Edwin* to be found as Proprietor of any of them, or other Lands; nor is the name of **William de Albini**, or **William Pincerna** to be found as a Proprietor in *Norfolk*, or in *Domesday*, though this **MS.** of the Family of **Sharnborn** says he had that Village and several **Towns** thereabouts given him by the **Conqueror**; by which it appears, that this Report is groundless. Our Author says this is cited almost as the onely Case and Act of favor the Conqueror did; and adds, that for men to think so is a great mistake, and that he could give many Instances of the like Nature out of **Domesday Book**. But if he finds this there, or any one **Plea**, or **Grant** of the Like nature, instead of many he speaks of, I will allow him to be a man of a very sagacious Invention;

This Survey was begun in the 14th, and finished in the 20th of his Reign. Vid. *Terr. Willielmi de Warren & Episcopi Baiocens. in Norff.*

Edwin no Proprietor in *Norff.*

p. 26.

tion; **Pleas** there are many between Man and Man, and between the *King* and others, **but none like this.** I ſhall give an example or two to illuſtrate them.

Clamores in Northtreding in Eurviſcire In Limberge clamat Ivo Talleboſc ſuper Regem vi. Bovat. Terre Dicunt homines Comitatus quod ipſe debet habere terram & Rex Socam. That is, in Limberge Ivo Talleboſc Claymes upon the King vi. Bovates or Oxeganges of Land; the men of the County (**the Jury**) ſay that he ought to have the Land, and the King the Soke or Juriſdiction upon it. *Clamores in Weſt-treding ſuper Drogonem clamat Norman de Adreci iij Bovat. Terre in Normanby, dicit Wapentachium quod ipſius debet eſſe terra, & Drogonis Soca.* That is, Normande Adreci claims upon Drogo iii. Oxeganges of Land in Normanbe, the Wapentach ſays that Land ought to be his, and the Soke Drogo's. And many the like; all which Judgments and Controverſies were amongſt the **Normans**, as may be eaſily perceived by their Names, and the Judgment of the **Court, Hundred**, or **Wapentach** moſt commonly was grounded upon the **Sight** of **King Williams Seal**, his **Writ** or his **Commiſſions**; by which, or ſome of them, it appeared to be ſo, as I could make it out, if it were proper to do it in this place.

The way and manner of the Pleas in *Domesday Book.*

The 3d Argument he uſeth upon this head, is the Aſſertion of a great Lawyer and Judge in *Ed. the Third*'s time, admitted and agreed as a Rule of Law and truth by the Judges, and tranſmitted to Poſterity, being ſpoken in

p. 26. Judge *Sharde-lowe*, A Rule of Law and truth averred by our Author.

an

an Objection made in a *Quo Warranto* againſt the Abbat of *Peterborough*. *Le Conqueror*, (ſaith the Judge) *ne vient pas pur Ouſter eux qui avoient Droiturel poſſeſſion, mes de Ouſter eux queux de lour tort avoient occupie aſcun terre en Diſheritance del Roye & ſon corone.* That is, the **Conqueror** came not at all to out thoſe which had right Poſſeſſion, but to out thoſe which by their wrong doing had occupied any Land in Diſheritance of the King and his Crown. I ſhall not inquire whether this be admitted as a **Rule of Law**, or whether the Judge that ſaid this, believed it himſelf: Sure I am, that if this Gentleman be ſo well acquainted with **Domesday Book**, as he pretends to be, he cannot believe it, nor any one that ever peruſed it but one half hour.

Large Eſtates given to the *Normans* by the Conqueror.

Were the 793 *Manners* **Robert Earl** of **Moreton** in *Normandy*, and *Cornwal* in *England* had given to him by **King William**, onely Lands that had been kept from the Crown? Were **Alan Earl** of **Britain**, and **Richmonds** 442 Manners given him by the *Conqueror*, Lands witheld from the Crown? Were **Geofry Biſhop** of *Conſtance* his Lands 280 Manners, Lands of the like nature? Were all the **Normans** great Eſtates in every County ſuch Lands as thoſe? In **Domesday** the names of the great Proprietors are entered in every County before the particular deſcription of their Lands, and mention of their under Tenants: What became of all the Lands of the **Saxon Nobility**, their **Great Earls, Thanes, Bid-**

It appears by Enumerating the ſeveral Towns and Manners they poſſeſſed in ſeveral Counties.

Domesday in ſeveral Counties.

And they were no Crown-Lands.

die-

dle-Thanes, &c. Were they not given to the Normans? Did they not all take their Title from King William and the *Sword?*

Had the Saxons all of them invaded the Crown-Lands, and made up their Estates out of them? Were the Whole County of Chester, given by the Conqueror to Hugh de Abrincis his Kinsman, and a Norman, Crown-Lands? Were the greatest part of Shropshire given to Roger de Monte Gomerico a Norman, Crown-Lands? Whoever reflects upon these things, must acknowledge this *Judge* to have been very ignorant in the *History* of this *Nation*, or that he spoke the words out of *Design*, and that which way soever it happened, his Assertion was not a fit Foundation to build a Rule of Law upon. And 'tis a great Argument he *studied*, and *knew* onely *Popular*, and *Lucrative Law*, and not the *Constitutions* of the Nation before his own time. What remains in this Discourse about the *Conqueror*, That he claimed not by the Sword, but was elected, *&c.* which he would fain prove out of the Fragments of some Authors that lived at some distance of time from his coming hither, I shall prove from undeniable Reason and Authority, that he Governed the Nation as a *Conqueror*, and did so *live*, and did so *take*, and *repute* himself to be.

Had *Sharnborns* Plea been good, doubtless there were many in these parts and Possessors of these Estates, that might have said they never opposed Duke *William* either *Consilio vel auxilio.*

William first Governed as a Conqueror, and did so take and repute himself to be.

This appears first by his bringing in a *New Law*, and imposing it upon the people, and 'tis clear he did so: The *Justiciaries* or *Chief Justices*, the *Chancellors*, the *Lawyers*, the

The chief Justice and other Officers of the Law all *Normans.*

the *Miniſterial Officers*, and *Under Judges*, *Earls*, *Sheriffs*, *Bailiffs*, *Hundredaries*, were all *Normans*, from his firſt coming until above 100 years after, as I can make it out, by particular Inſtances, and undeniable Reaſon, were not the Catalogues too long to be here inſerted. If therefore the *Juſticiaries*, *Chancellors*, *Earls*, *Sheriffs*, *Lords* of *Manners*, ſuch as heard Cauſes, and gave Judgment were **Normans**, if the **Lawyers**, and **Pleaders** were alſo **Normans**, the **Pleadings** and **Judgments** in their ſeveral **Courts** muſt of neceſſity have been in that **Language**, and the **Law** alſo the **Norman Law**, otherwiſe they had ſaid and done they knew not what, and Judged they knew not how; eſpecially when the Controverſies were determined by **Military Men, Earls, Sheriffs, Lords** of **Manners**, &c. that underſtood not the *Engliſh* Tongue, or Law; or when the chief **Juſticiarie** himſelf was a **Military Man**, as it often happened, and underſtood only the **Norman Language**, and 'tis hardly to be believed theſe men would give themſelves the trouble of learning and underſtanding the *Engliſh Law* and *Language*; yet perhaps ſome men may think they came by the knowledge of the *Engliſh Law* Sir *Edward Cokes*'s way, by *Revelation*, who galled with an Argument (that he could not anſwer) that our *Engliſh Laws* were the *Norman Laws*, tells us the *Engliſh Laws* cannot be ſaid to be written in the *Norman* Tongue, for the *Laws* of *England* are (**Leges non ſcripte**) Laws not written, but divinely caſt into the hearts of Man.

It was ſo until it was altered by Stat. 36 *Ed.* 3. c. 15. and this is the true Reaſon why all our old Laws and Pleadings were in *Norman French*.

Reading de finibus, p. 3.

Se-

Secondly, Though we have many *Laws* and *Cuſtoms* from the *Northern* People, and North parts of *Germany*, from whence both **Saxons** and **Normans** came: yet after the *Conqueſt*, the Bulk and Maine of our Laws were brought hither from *Normandy*, by the **Conqueror**. For from whence we received our **Tenures**, and the Manner of holding our Eſtates in every reſpect, from thence alſo we received the **Cuſtoms** incident to thoſe *Eſtates*. And likewiſe the quality of them, being moſt of them *Feudal*, and enjoyed under ſeveral **Military Conditions**, and **Services**, and of neceſſary conſequence from thence, we muſt receive the *Laws* alſo by which theſe **Tenures**, and the **Cuſtoms** incident to them were regulated, and by which every mans right in ſuch Eſtates was ſecur'd according to the nature of them. But from *Normandy* (and brought in by the *Conqueror*) we received moſt, if not all our ancient *Tenures*, and manner of holding and enjoying our *Lands* and *Eſtates*, as will appear by comparing our *Ancient Tenures* with theirs.

Ibid. Our antient *Engliſh* Laws came from *Normandy*.

Spelm. Gloſs. fol. 218. Our antient Tenures were from *Normandy*. See *Grand Cuſtom.* throughout

And further, he took away from the *Engliſh* their Eſtates, and gave them to his *Normans*; and this he did from his firſt coming in; *Fitz-Osbern* was made Earl of *Arundel* and *Hereford* at his firſt coming in, and was Lord of *Brettivil* in *Normandy*, and eſtabliſhed the *Laws* of that Town at * *Hereford*. **Alan Earl** of **Britain**, had all *Earl Edwins Lands* given to him at the Siege of *York* three years after his arrival; and he had diſtributed moſt of the Lands of the Nation

Scriptor. Norman, fol. 1037. *Cum Willielmus hanc terram primo devicit non ſolum in poſſeſſiones villarum, ſed in Matronas & virgines inſanive cepit. Ead.* Hiſt. Nov. fol. 57. n. 40.

* *Leiceſter's Cheſhire*, and *Tranſcript. of Domeſday*, there fol. 431

William I. gave most of the Estates of the *English* to his *Normans*, &c.

tion to his **Normans**, long before the **Survey** was begun, and by that infallible Record it is clear, that he gave near all the Lands of the Nation to his Followers, and very little or none to the *English*, who held what they had by a new Title, and new Services from the Conqueror, or his great Lords, or became Tenants to, or Drudges upon their own Lands, as we heard before from *Bracton* and *Fleta*. Here is enough to satisfie an unbyassed Person, that the *Conqueror* did not lay by his Sword after the *Battle* of *Hasting*. Yet, for further satisfaction; I shall confront his Authority, with the Testimonies of such Authors as lived in the time, and could not but know how he Governed, and what he did.

Hist. Nov. fol. 6. n. 10,20,30.

Eadmer a Monk of *Canterbury* at the time of the Conquest, a great *Companion* to *Arch-Bishop Lanfranc*, and was with him when the News came of the *Conquerors* death, writes

Eadmer's Testimony how *William* the I. Governed.

That *William* designing to establish in *England* those Usages, and Laws, which his Ancestors and he observed in *Normandy*, made such persons *Bishops*, *Abbats*, and other *Principal men*, through the whole Nation, who could not be thought so unworthy, as to be guilty of any reluctancy, and Disobedience to them; knowing by whom, and to what they were raised; all Divine and Humane things he ordered at his pleasure. And after the Historian hath recounted in what things he disallowed the Authority of the *Pope*, and *Arch-Bishop*, he concludes thus. But what he did in Secular matters I forbear to write, because

becauſe it is not my purpoſe, and becauſe alſo any one may from what hath been delivered gueſs what he did in Secular.

The next is the Teſtimony of **Ingulph Abbat** of **Croyland**, an *Engliſh* man, born of *Engliſh* Parents, **Secretary** to *William when Duke* of *Normandy*, and **made Abbat** by him; he informs us, that by hard uſage he made the *Engliſh* to ſubmit; that he gave the *Earldoms*, *Baronies*, *Biſhopricks*, and *Prelacies* of the whole *Nation* to his *Normans*, *and ſcarce permitted any Engliſhman to enjoy any Place of Honor, Dominion, and Power.*

Hiſt. Croyl. f. 512. a. n. 50. b. l. 1.

Ingulph Abbat of *Croyland* his Teſtimony in the ſame matter.

But more expreſs and full to this purpoſe is the account we have in *Gervaſe* of *Tilbury* (a conſiderable *Officer* in the *Exchequer* in the time of *Henry* II. and who received all he knew there from *Henry* of *Blois* the great *Biſhop* of *Winchester* and *Grand-child* to the *Conqueror*) of his dealing with the *Natives* which he thus delivers: After the Conqueſt of the Kingdom, and juſt Subverſion of Rebels, when the King himſelf, and his great Men had viewed and ſurveyed their new Acqueſts, there was a ſtrict enquiry made, who there were which fighting againſt the King, had ſaved themſelves by flight, from theſe and the Heirs of ſuch as were ſlain in fight, all hopes of poſſeſſing either *Land* or *Rents*, were cut off; for they eſteemed it a great favour to have the benefit of their Lives; but ſuch as were called and urged to fight againſt *King William*, and did not, if in proceſs of time they could obtain the favour of their *Lords* and *Maſters* by an humble obedience

Gervaſe of Tilbury, or the *Black Book* in the Exchequer more full and expreſs in the ſame caſe then both the former.

Lib. 1. C. de Mordro. de neceſſar. obſerv.

Note this

and obsequiousness, they might possess somewhat in their own persons, without hope of Succession, their Children only enjoying it afterward at the will of their *Lords*, to whom when they become odious, they were every where forced from their possessions; nor would any restore what they had taken away: when a common miserable complaint of the Natives came to the *King*, that they thus exposed, and spoiled of all things, should be compelled to pass into other Countries. At length, after a consultation upon these things, it was decreed, that what they could by their deserts, and lawful Bargain obtain from their *Lords*, they should hold by inviolable Right, but should not claim any thing from the time the Nation was Conquered, under the Title of Succession or descent: Upon what great consideration this was done, it is manifest, says **Gervase**, when as they were obliged upon a studied compliance, and obedience, to purchase their Lords favour; so therefore, whoever of the Conquered Nation possessed Lands or such like, obtained them not as seeming to be their Right by Succession, or Inheritance, but as a Reward for their Merits, or by some interveneing Agreement. And now let me ask this Gentleman, Was it not **William Duke of Normandy** did these things? Did he not think, forecast, and contrive how to do them? Was he a sleep when they were done? Were they not done by the advice of his great *Officers*, and *Counsellors*, his Great *Lords*, and *Barons*? Can it be reasonably imagined that he and they should give way to, or esta-

Ibid.

And this.

Ibid.

How and after what manner the *English* possessed Lands after this Conquest.

And this.

bliſh ſuch Laws as would undo, and deſtroy their own Settlement? Or can it be thought he never intended to gratifie the Adventurers with him in this Expedition, the **French, Flemmings, Anjovins, Britains, Poictovins**, and people of other Nations, who made up a great part of his Army, and came with him under great and conſiderable men their Leaders? Or that they ſhould expect nothing? Can any man affirm they came out of *ſtark love*, and *kindneſs*, *without any conſideration* of *ſharing* with, and under him in the *Conqueſt*?

Adventurers with Conquerors expect Shares in the Conqueſt.

Whoſoever anſwers theſe Quæries juſtly, and truly, muſt acknowledge that *William* did claim no otherwiſe than by the Sword, and made an actual Conqueſt. The pretence that he claimed from *Edward*, *jure hæreditario*, is idle; for neither was he Heir to *Edward*, or *Edward* Heir to the Crown. The beſt Title, if he had any but his Sword, was a Gift or Grant of the Crown from *Edward*, which I ſuppoſe will not be allowed, and therefore in reaſon his Title as well as his actual enjoyment of it, was only from the *Sword*; and the other meer pretences to catch the people: The things that facilitated his Conqueſt, were the *Factions* among the *Saxon*, and *Daniſh Nobility*, and People; the *Popes* encouragement, and ſiding with **William**, and the inclineableneſs of the Clergy to his Cauſe; who were the men that then had the great power over, and influence upon the people. But ſtill our Author urgeth that King *William* granted that *Edward* the *Con-*

William the 1. claimed by the Sword, and made an abſolute Conqueſt.

Ingulph. fol. 512. b. n. 40.

What made *William's* Conqueſt of *England* eaſie to him.

Not. ad eadem. fol. 173.

Ibid. fol. 172, 189.

Hist. Croyland in fine.

King Edward's Laws

were mostly Pœnal Laws.

P. 32, 33. The Conquerors *Magna Charta* examined.

fessors Laws should be observed, and pitcheth upon those put out by *Selden*, who took them from the Copy preserved in *Croyland Abby*, which only he judgeth Authentick: The other put out by *Lambard*, and Printed in *Ro. Hoveden* he rejects: What these *Laws* were let us hear **Ingulph** himself. *I brought with me* (says he) *from* London *the Laws of the most illustrious* King Edward, *which my* Lord King William would have to be Authentick, *and* Perpetual *through all* England, *and to be observed inviolably under grievous punishments, which were published, or proclaimed in the same Language they were written, least by our ignorance we might incur the great danger, and most rigid Censures and Penalties of them.* 'Tis clear from the very words of *Ingulph*, that these were only the **Penal Laws** of King *Edward*, and indeed the Laws themselves, in number 50 only, Printed in the old *Norman* Idiome are all Pœnal Laws, and such as concern *Criminals* (nothing to our Authors purpose) except three or four about Reliefs, and one about Distresses of small moment, and these are all *Selden* (says **Ingulphs Copy**) affords, but that there were many others he likewise says in *Old Rolls* and *Parchments*, of which he had the best Copy, and hath tacked it to the rear of these, and proceeds in order with the 51 *Title and Law*, and so *forward*. And amongst these he finds a Branch of the *Conquerors Magna Charta*, which he thinks does him great Service. The words are these. **Volumus** *etiam ac firmiter præcipimus & concedimus* **ut omnes** li-

beri

veri homines totius Monarchie regni nostri predicti *habeant & teneant terras suas, & possessiones suas, bene & in pace liberè ab omni* exactione injusta & ab omni Tallagio *ita quod nihil ab eis exigatur, vel capiatur, nisi* servitium suum liberum, quod de jure nobis facere debent & facere tenentur, *& prout statutum est eis, & illis a nobis datum & concessum* jure hereditario *in perpetuum per* commune concilium *totius Regni nostri predicti.* That is, We will, and firmly *command*, and grant, that all **Free-men** of the whole *Monarchy* of our *Kingdom*, may have and hold their Lands and Possessions well and in Peace *free from all unjust* **Exactions** and **Tallage**, so as nothing be exacted or taken *unless their free* **Services**, which of right they ought and are bound to perform to us, and as it was appointed to them, and given and granted to them by us as a *perpetual right of inheritance*, by the *Common-Council* of the *whole Kingdom.* This *Common-Council* will not help him, for without doubt here was **no English men** in it; certainly they would not grant away their own Lands to Strangers. These were the **Saxons Lands** which **William** had given in **Fee** to his Soldiers to hold them under such **Services** as he had appointed them, and that by *right* of **Succession** or **Inheritance**, which right was not very frequent amongst **Feudataries**, or **Military Tenents**, in those days: but mostly they *held* their *Laws* at the **Pleasure** of the *Lord* or *Patron.* And this he did

to endear his Followers to him, and this was no **Magna Charta** made to **English** men, as this Gentleman and most others mistake it to be; and here also upon the same Account he granted their Lands should be free from all **unjust exactions** and **Tallage**, that is, from all **extraordinary hard Impositions** and **Taxes**; for so **Tallagium** signifies, not their ordinary **Scutagia** and **Auxilia**, Scutage or Aids; and good reason for this, when they served on Horseback themselves, and found King *William* so many Knights or Horsemen as he had appointed them, at their own Charge, whenever he commanded them. And these **liberi homines** Free-men, here mentioned, were such as *held* in **Military Service**, though our common Interpreters make them the same with our Free-men at this day; which is a gross mistake: for these Free-men in this Law, can be no other than such as are mentioned in the 58th Law here following, and they were such as held in Military Tenure, though not Knighted, for such as were, are called *Milites*, and the other *liberi homines*, and sometimes they are taken promiscuously one for another. The Law runs thus, *Statuimus etiam & precipimus firmiter ut* **omnes Comites Barones** & **Milites**, & **Servientes**, & **Universi liberi homines totius Regni nostri**, &c. The whole Law is thus aptly rendred in *English*, We ordain also, and firmly command, that all *Earls*, *Barons*, *Knights*, and *their Servants*, or *Escuyers*, and all *Free-men* of our whole *Kingdom* (the same words as in the 55th Law) be

See *Liber* or *Liberi homines* in Glossar.

Freemen in the Confessors Laws amended by *William*, who they were.

Law 58. explained. Are there any *English* Earls, Barons, or Knights in *Domesday* that had Estates. If there be, lets know their names and number, they are soon told, and then it may be seen what proportion they bear to the *Normans*.

be always *fitted* with **Horſe**, and **Arms** as **they ought to be**, and always ready to perform their **whole Service** to us, when there ſhall be need, *which* they **ought** to *do*, **according to, and by reaſon** of **their Fees**, and **Tenures**. *As we ordained by the Common-Council of our whole Kingdom. We gave and granted to* them in **Hereditary Fee** (the very ſame words again) and this Command is not to be violated any way without full Forfeiture, that is, of all their Lands and Goods.

The Services of thoſe Free-men.

Here all the Free-men of his Kingdom were to perform their Military Services, with Horſe and Arms, according to their Fees and Tenures. Therefore they were *Tenents in Military Service*, which in thoſe times *were the only great Free-men*, and that *Service the only free Service*) which were meant in this *Law*. And how different they were from our our ordinary Free-holders at this day (for whom neither of theſe Laws were made) I leave to the Judgment of every ingenuous Reader.

☞ See *Liber homo* in Gloſſar.

Theſe were the Men, the onely **legal men** that named, and choſe *Juries*, and ſerved on *Juries* themſelves, both in the *County* and *Hundred Courts*, and diſpatched all Country buſineſs under the great Officers, as will appear by the next Law with a little explication. *Statuimus etiam & firmiter præcipimus* (ſaith the 59th Law) *ut omnes liberi homines totius regni, ſint fratres conjurati ad Monarchiam noſtram & ad regnum noſtrum pro viribus ſuis facultatibus contra inimicos pro poſſe ſuo*

Glanvil lib. 2. c. 11. lib. 9. c. 7. *Grand Cuſt.* c. 111. fol. 135. b. K. *John's Magna Charta*, *Paris* fol. 257. n. 40.

Law 59th of the Conqueror explained.

suo defendendum & viriliter servandum, pacem & dignitatem coronæ Nostræ integram observandam, & ad **judicium rectum & Justiciam constanter omnibus modis,** *pro posse suo, sine dolo, & sine dilatione faciendum.* Which is thus to be turned, We ordain and firmly command that all **Free-men** of the *whole Kingdom* be *Sworn Brothers*, manfully to preserve and defend our Monarchy, or Government, and our Kingdom with all their Power, Force, and Might, and keep entire the Dignity and Peace our Crown, and to give right Judgment, and to do Justice by all ways and means according to their power and ability, without fraud or delay. The judgment they were to give, and the justice they were to do by this Law (besides that in their own Courts and Jurisdictions) was principally as they were Jurors or Recognitors upon * Assizes, *&c.* (though some of the greatest of their *Milites* were often Sheriffs, Hundredaries, and other under Judges, and ministerial Officers of Justice in the several Counties.) As may be seen in *Glanvil*, every where, but especially, *lib.* 2. *c.* 10. 11. *lib.* 9. *c.* 7. *c.* 13. *& lib.* 13. throughout. This of being Suitors to the County and Hundred Courts, *&c.* was a Service incident to their Tenures: Before them, many times aunciently in the County, and Hundred Courts, and not privately in a Chamber, were executed *Deeds*, *Grants*, and *Donations* of Lands contained in very small pieces of Parchment, Witnessed by *Thomas* of such a Town, *John* of another, *Richard* of a third, *&c.* which

* K. *John's Magna Chart. Paris.* fol 257. n. 40.

This Law came from *Normandy*, and in the Grand-customer we have an Assise described to be an Assembly of Knights and Sage-men with the Baily, *&c.* c. 24.

Bracton l. 2. c. 16. n. 12.

were

were Knights, & ibere *Tenentes in Military Service* in those Towns of considerable Estates, and *not the Lower sort of the people*: And this execution of Sales, and Assurances in open Court, was as publick, and notorious, and as secure, as if at that time, there had been a *publick Register* for them. In process of time the *numbers* of these *Free-holders* increased, the great Fees being divided into small ones by *Co-heirship* or by *Sale*, and otherwise parcelled out by the Kings Licence into *Half-Fees, third parts of Fees, fourth parts of Fees, eight parts, sixteen, and twenty parts of Fees.* Which is the least part of a *Knights Fee* I have met with, and it often occurs in two *Feodaries* of the *Lordship* of *Halton* in the *County* of *Chester*, made about the time of *Ed.* II. and renewed about the time of *Henry* VI. printed in Sir *Peter Leicester's Remarks* concerning *Cheshire*: Which twentieth part of a Knights Fee, if we allow Lands to be of five times the value, it was 266 years since the Statutes were made, that Jurors should have 20 s. and aftewards 40 s. *per annum*; besides all Charges, that Sum will amount to 10 *l. per annum.* The *twentieth part of a Knights Fee*, by general computation before that Tenure was destroyed by Act of *Parliament*, being valued at 200 *l. per annum*, and in the times near the Conquest until after King *John*, 20 *l. per annum*, was the value of a *Knights Fee*, and in the middle times after the Conquest 40 *l. per an.* was the value of the same, as is evident by the Writs of our Kings of those times to distrein men of 20 *l.* and 40 *l.*

Knights Fees divided.

The 20th part of a Knights Fee.

Fol. 288. 291.

2 *Hen.* 5. c. 3. & *vid.* 35 *Hen.* 8. c 6. where it is expounded.

Knights Fee, see Glossar.

The antient value of a Knights Fee.

Dorl. claus. 6. *Ed.* 2. m. 27. ib. 9. E 2. m. 13.

40 *l. per annum*, to receive the order of *Knight-hood*.

And as the number of them increased, so they were all obliged to the *same Service* and *Suit of Court*, as well those that had a greater as those that had the least share of the Fee; and they by virtue of their Tenure and Service were as good, though not as great Free-holders as the best of them. These in all probability were the men that at first elected two Knights in every County out of their own number, and only they were Electors, when at first the body of them began to be this way represented; And then not very numerous, and this not improbably might be the reason of the Statute made afterwards, 7 *Hen.* 4. *c.* 15. *An. Dom.* 1406. that the Election should be made in the County Court by the Suitors, *&c.* and likewise might be the reason why the Statute of the 8th of *Hen.* 6. *c.* 7. by which any man that had 40 *s. per annum* of any Tenure, was permitted to be an Elector, was altered, and so explained that none but Free-holders of 40 *s. per annum*, should afterward be Electors by 10 *Hen.* 6. *c.* 2. *An. Dom.* 1432. with respect perhaps to the least part of Knights Fees, *viz.* 40 *s. per annum*, which were come into the hands of very ordinary men; for aunciently soon after the Conquest, there were very few or no *great Soccagers*, that is, such as held great Estates in *Soccage*, and neither the small ones, nor the *Nativi*, or Copy-holders, were reputed *liberi*, or *legales homines* (as beforementioned) or performed the Service proper

For it cannot be thought but that these blustering men that had the only pretence (as will appear afterward) to be present in the great Councils, would entirely preserve it amongst their own order, and not part with it to people at that time of no interest. Such were the other inferiour sort of people.

LL. *Hen.* 1. *c.* 29.

per to such Military Tenents. The truth is, the greatest part of the antient Law under our antient Kings after the Conquest was the Feudal Law, brought hither by the *Normans*, under whom it was more rigidly exacted and observed than in the *Saxon* times, and that by, and upon only the *Normans* themselves. For the English had neither Estates nor Fortunes left, and therefore it could be no great matter to them, by what **Law, Right,** or **Propriety**, other men held their Estates. This Law, and the great Pœnal Laws and Customs then in use were brought out of *Germany* by both these people, they being Neighbours there; and if there were any usages came along with them, which seem to have no dependence upon that Law, yet without great trouble most of them are reducible to it. I have been thus long in expounding the **Magna Charta of William the Conqueror**, as this Gentleman calls it, that I might discover the *Mistakes* of the *Common Interpreters* about the meaning of it.

Most of the antient Law was the Feudal Law. Vid. Glossar. Feudal Law.

P. 32, 33, 34, 35.

I confess this discourse doth not directly reach the Controversie between us, but I follow our Author, as I promised in the entrance upon it, and he hath led me to it by insisting much upon the ordinary, common, and *mistaken Notions* of the *Conquerors Title*, *Laws* and *Government*, devised on purpose to decry, baffle, and conceal the nature, and use of the Feudal Law here, and encourage the people to tumult against it, by the Monks and Clergymen-Lawyers, who wrote a Century two or three

three after the Conqueſt, that they might the more eaſily introduce in ſtead of, or mix with it, the *Canon Law*; yet moſt what the *Clergy* and *Laity* then deſired, or had granted them, was only the relaxation of the rigid Feudal Tenures, as is evident by the Charters of *Henry* I. and King *John*, both in *Mat. Paris*, which contain little elſe.

Fol. 55. n. 40. & 255 n. 50.

P. 39. 40.

All our Author collects from this diſcourſe upon the **Conqueror**, is, that there were *Common Councils* in his time, whereby it appears that the *Free-men* or *Commons* of *England* were there, and had a ſhare in making *Laws*; *For what* (ſays he) *could the promiſed reſtitution of the* Laws *of* Edward *the* Confeſſor *ſignifie, if their* Witena-Gemote *and* Parliaments *were deſtroyed and broken?* This needs no other Anſwer, than that it doth not appear by the *Confeſſors* Laws, (if we know what they were) that the Commons were part of the **Saxons Witena-Gemote**, but on the contrary it hath been here proved, and will further appear, that as the **Saxon Great Men**, were only preſent, in their great Councils, ſo the **Norman Barons**, and their great Men, were only preſent in thoſe of the **Conqueror**.

There were ſeveral great Councils in *William* the I. his Reign, but who, and of what perſons they conſiſted, is not ſo clear, they were chiefly about Eccleſiaſtick matters, and in moſt of them we have many *Biſhops* names, and

and no others, not so much as the *Principes, Primates*, or *Magnates* in general, unless in that Council, *An. Dom.* 1071. mentioned in *Radulph de Diceto*, wherein 'tis said the plaint of *Wulstan*, *Bishop* of *Worcester was ended, in Concilio celebrato in loco qui vocatur Pedreda*, **coram** *Rege & Dorobernia Archiepiscopo & Primatibus totius Regni.* The great confluence of people at his *Coronation*, is to be looked upon rather as a *confused congress*, then a *regular great Council*; and what was done there by the *English*, cannot truly be said to be their act (many of the Bishops excepted) who dare do no otherwise, being over-awed by his whole Army there present, and must in all things submit to his pleasure; for when *London*, and the Countries about it, had *submitted*, *given Hostages*, and *sworn Fealty* to him, he nevertheless *permitted* his Army to *burn Towns*, and *commit rapine*. The *Meeting* at *Pinenden-Heath* in *Kent* was a *Shire-mote* or *County Court* rather than *great Council*, appointed by Special Commission, for the determining the Controvesie between **Arch-Bishop** *Lanfranc*, and *Odo Earl* of *Kent*, concerning *Lands* and *Customs* he witheld from the *Church* of *Canterbury*, where the *King* by Writ convened the **Chief** and **Legal** Men, not only out of *Kent*, but out of other Counties of *England*, as *Arbiters* and *Judges*. And good reason, seeing the *Kentish* Men were like to be too much biassed on one side or other, in respect of the Dependency on, or relation to one of them; and here the Judgment was for *Lanfranc*, having so great

Col. 483. n. 30.

P. 29. 30, &c.

Hoved. f. 258. a. l. 9.

Ibid. l. 7.

The meeting at *Pinenden-Heath* no great Council.

p. 45.

The Case between Archbishop *Lanfranc*, and *Odo* Earl of *Kent*.

Eadem Hist. nov. fol. 9. n. 40. How judged p. 46.

great reason on his side, that *ex communi* **omnium** *assipulatione*, *& judicio ibi cuncta recuperavit*, by the common *assipulation* and *Judgment* of *all the Judges* or *Jurors*, or of all present. Not assipulatione **totius regni** (as our Author cites *Eadner*) he there recovered all things.

21 Ed. 3. fol. 60.

The last Authority he brings in this Kings Reign is from the Year-Books, where in a Case concerning the exemption of the **Abby** of **Bury** from the Visitation of the Bishop

p. 48.

of *Norwich* it is said, *In temps W. Conqueror a son Parliament*; here because the **word Parliament** is mentioned, which came not into use instead of **Colloquium magnum**, or **Commune Concilium**, &c. until about the middle of the Reign of *Henry* III. and became of more frequent use after the 49th of *Henry* III. when the other words were very little or not at all used. He would have the **Commons** to be a part of that great Council, as they were of the *Parliaments* in the time of *Edward* III. and conceals what follows; that what was ordained in that *Parliament* (as they then called a *great Council*)

Ib. 21. E. 3. f. 60

was **per le Roy & per le Archevesq; de Canterbury & per tous les autres Evesques de la terre Countes & Barons**, By the King, the *Archbishop* of *Canterbury*, and all the *other Bishops* of the *Land*, *Earls* and *Barons*. From this passage we may observe that **William** the First was then reputed a **Conqueror of this Nation**, and that the **Judges** of that time thought him so, and that the **Members** of that

Par-

Parliament (if he will have it ſo) were the **King, Archbiſhop, Biſhops, Earls,** and **Barons** *only*, the **Commons** being not mentioned.

Great Councils in the Conquerors time conſiſted of the King, Biſhops, Earls, and Barons.

William the Second.

But to proceed, the *Conſtituent parts* of the *great Councils* in the *Conquerors* time will better be known by what they were in the Reigns of the next ſucceeding Kings, for they were certainly the ſame: yet before we come at them, we muſt ſtep out of the way if we will cloſely follow this Gentleman. He tells a piece of a Story how *William Rufus came* to be *King*, and at laſt concludes that he was elected, and here and there tells us that many of our *Kings* (ſuch only as were manifeſt Uſurpers) ſince the *Conqueſt* were Elected. But he may as well ſay **Oliver Cromwell** was elected **Protector**, or any other **Traitor** or **Uſurper**. *Rufus* his Pretence to the Crown, was his Fathers Will, by which he gave *Normandy* to his eldeſt Son *Robert*, *England* to his ſecond Son *William Rufus*, or a Sum of Money, or his Mothers *Poſſeſſions* in *England* to his *Third* and youngeſt Son *Henry*.

William Rufus was not Elected.

Florent. Wigorn. fol. 642. who was at this time a Monk in *Worceſter* and *Malmesb.* fol. 63. b. l. 6.

No

Order Vital. fol. 763. D. An English man and a Monk at this time in *Uticum* in *Normandy*.

No sooner was the *Conqueror* dead, but his *Son William* (not staying to pay the last dues to his deceased Father) hasted into *England* with *Robert Bloet* one of his Fathers Chaplains (afterwards *Rufus*'s *Chancellor*, and * *Bishop* of *Lincolne*) who brought to *Lanfranc*, *Archbishop* of *Canterbury*, the Donation of his Father, which he having read, and taking from him all imaginable security by Promises and Oath that he would be very kind to the Clergy, made haste with him to *London*, and by his Interest in them (who then managed the Affairs of the Nation) and such other Great Men as he could influence, on *Michaelmas* day (the *Conqueror* dying *September 9.*) with their consent Anointed him King in the old Church of St. *Peter* in *Westminster*, and returning to *Winchester* (where was then the Treasury in the Castle there) he distributed his Fathers Treasure as he had commanded him, and sent it to the *Churches* and **Monasteries** through *England*.

* Godw. de præsul. Angl.

How *Rufus* came to be King.

Orderic. Vital. fol. 663. C. Florent. Wigorn. ut supra.

Florent. Wig. ibid. An. Dom. 1088.

Florence a *Monk* of *Worcester* at that time, who died *An. Dom.* 1119. and was no friend to *Rufus*, tells us, that not long after his Coronation there arose great discord and contention between the chief Men of *England*; for part of the *Great*, and *Noble Normans* favour'd King *William*, but it was the least; and the other part of them favour'd *Robert Duke* of *Normandy*, which was the greatest.

Ordericus Vitalis at this time a *Monk* in the *Monastery* of *Uticum* in *Normandy*, gives a more full account of the transactions concerning this matter, to wit, that the chief

Fol. 665.

Men

Men that had and were like to have great Eſtates both in *England* and *Normandy*, met to treat about the conveniencies or inconveniencies of the ſeparation of them one from the other, by the *Rule* and *Dominion* of two diſtant Princes, having both been under the Power, and Government of their defunct Lord, who by their aſſiſtance had Conquered *England*. They were in a great ſtreight what to do, they could not ſerve two Lords ſo remote from one another: *If they faithfully ſerved the Duke of* Normandy, *they ſhould offend his Brother* William, *and looſe their Lands and Honors in* England; and if they proved obedient to him, *Robert* would deprive them of their Paternal Inheritance in *Normandy*; At laſt they reſolved, ſeeing *Robert* was the eldeſt, and that they had *ſworn Fealty* to him in his Fathers life time, to ſet him up and make him King of *England*, for the preſervation of the Unity of both Nations. *Odo Biſhop* of *Bajeux*, *Euſtachius Earl* of *Bolloin*, *Robert de Beleſme*, and many others acquainted *Robert* with their intention, to whom, if they would begin, he promiſed ſufficient aſſiſtance for the effecting their Deſign. Therefore after *Chriſtmaſs* they paſſed into *England*, fortified their Caſtles, and in a ſhort time ſtirred up a great part of the Country againſt the King; with theſe joined *Roger Earl* of *Arundel*, and *Shrewsbury*, *Hugh Grentmeſuil*, *Vicount* of *Leiceſter*, and many more very great men in *England*, or at leaſt ſeemingly continued with *William*, and favoured the *Deſign* of *Robert*.

Ibid. f. 666. A.

Ibid. C. The great *Normans* would have ſet up *Robert* Duke of *Normandy*.

Ibid. D.

King William obſerving the poſture of his affairs, reſolved to ſuppreſs theſe Inſurrections, and to that purpoſe Convened *Lanfranc* the *Archbiſhop*, *Biſhops*, *Earls*, *and Natural Engliſh*, and ſhewed them his intention, who exhorted him to proceed againſt the Perturbers of the Peace, and promiſed their ready aſſiſtance. And then, as the Monk of *Worceſter* again informs us, **Congregato quantum ad præſens poterat Normannorum, ſed tamen maxime Anglorum Equeſtri & pedeſtri (licet mediocri) exercitu**, &c. having raiſed ſuch an Army as he could of Horſe and Foot of *Normans*, but the greateſt part *Engliſh* (though but a mean one) and by uſing the *Common bayte* of *Liberty*, *declaring he would alleviate the rigid Laws*, *give free leave of Hunting*, &c. he ſo encouraged his men, that he took in *Rocheſter*, and ſome other Caſtles, and brake the force of his Enemies.

Theſe *Engliſh* were Stipendiaries. *Mat. Par.* fol. 15. n. 20.

By what means *Will. Rufus* brake the Force of his Enemies.

But he overcame his Enemies not ſo much by force, as by inſinuating himſelf into **Roger Earl of Arundel** and **Shewsbury**, the chief perſon next *Odo*, in this Inſurrection; to whom he pretended, he would moſt willingly quit the Government, if he, and thoſe his Father had aſſigned his **Curators**, ſhould think fit. Yet adding, that he underſtood not why they were ſo outragious againſt him. If they would have Money, or Augmentation of their Eſtates, they might have what they would, upon condition they endangered not his Fathers Will and Judgment, which if they deſpiſed, they might hazzard their own

Malmesb. de Geſt. Reg. fol. 68. a. n. 10. 20.

Roger Earl of *Arundel* and *Shrewsbury* comes off to *William Rufus*.

own safety; for the same man that made him a King, mad them Earls and Great Men, and he ruled by his Army ever after.

William Rufus ruled by his Army.

Here we see *William Rufus*'s Title to the Crown, from his *Fathers Will*, and his own *Sword*, the greatest part of the *Norman* Nobility (which were then the **only Nobility** in **England**) were his Enemies, the *Bishops*, *Hugh Earl* of *Chester*, and *Robert de Roelent*, who was his General, *William de Warrenna*, and some few others his Friends. *Let our Author consider this, and tell me whether* William *the* II. *was Elected, or not:* **Or let him consider, that an Election is, or ought to be, a Free, Solemn, Deliberate, Sober, Sedate Act, of the whole People** (*where they have that Right*) **whereby the major part of them do choose this or that Person, or Thing, for such or such Ends and Purposes. And not an Undermining, Crafty, Cheating, or a Tumultuous and Forcible Act of a Party, or Faction, for the setting up this or that Person, or using this or that Means for the obtaining their own Designs and Purposes.** Let him, I say, consider and make a difference between these two Acts of the whole People, and a Faction, and he may easily make a true Judgment of all the pretended Elections of our *English* **Usurpers**, and all other **Traytors** whatever.

His Title.

The Great Men that sided with him.

What an Election is.

This is all worth notice that he says of this Kings Reign; but what is this to the great

great Councils or Parliaments; or how doth it prove that the Commons were an Essential part of them in this Kings Reign: Truly I cannot tell, nor I think any other Man, unless he will have it to be so, because some of the *English* by the instigation of the Bishops, and out of hatred to the *Normans*, took Arms for him, and helped him to overcome his Enemies. There were not, I suppose, many great Councils in *Rufus*'s time; and in those we find mentioned, there is not the least probability, *that the Commons*, as now called and distinguished from the great Lords, had any place in them.

Eadem fol. 20. n. 30. An. Dom. 1093.

I shall cite three or four, which I find clearly expressed. In the fifth year of this King there was a *great Council* at *Winchester*, wherein the King declared *Anselm Arch-Bishop* of *Canterbury*, and he did **Homage** to him. This Council is only thus expressed, **Rex adunato Wintonie conventu Nobilium**, without specifying either Ecclesiastics or Laics. The *King* having *convened* the *Nobility* at *Winchester*, without doubt both Orders of the *Nobility* were there, both the Lords *Spiritual* and *Temporal*, but not the *Commons*.

The great Councils in *Rufus*'s time.

At *Winchester*.

Eadem fol. 26. n. 10. At *Rockingham*.

In the seventh of this King there was a *great Council* held in the Church in *Rockingham Castle*, where the Question concerning the Kings Supremacy was discussed, **Ex Regis Sanctione firme totius regni Nobilitas quinto Idus Martij in unum apud Rockingham coit.** That is, almost all the *Nobility* of the *whole Kingdom*, by the

King

Kings Edict met at *Rockingham* on the 11th of *March*, and five or six Lines before this, in the same Leaf, we are told what the *Nobility* were, and what the cause of their meeting. *Anselmus igitur Salvâ ratione suâ, quam de subjectione & obedientiâ Romanæ Ecclesiæ in medium tulerat, petivit Inducias ad istius rei examinationem, quatenus* **Episcopis Abbatibus cunctisque Regni principibus, una coeuntibus communi assensu defineretur, utrum Salva reverentia & obedientia sedis Apostolicæ possit fidem Terreno Regi Servare an non.** That is, *Anselm* saving his reason he had produced concerning subjection, and obedience to the *Roman* Church, desired Respit for the examination of the matter, that it might be defined in a Convention of the Bishops, Abbats, and all the great Men of the Kingdom, by common Assent, whether or no saving his obedience, and reverence to the Apostolick See, he might keep his faith to a Terrene King. An. Dom. 1094

The Bishops, Abbats, and great Men only in this Council.

In the ninth or tenth year of this King, I find in the same Author there was another great Council, **in sequenti Pense Augusto cum de statu Regni acturus Rex Episcopos, Abbates, & quosque Regni Proceres in unum præcepti sui sanctione egisset.** The King intending to act something concerning the state and affairs of the Kingdom, by his Edict convoked the *Bishops, Abbats, and all* the *Noblemen* of the *Kingdom*. Can any man but our Author think the Commons were any way represented in any of these great Councils, and in those times there were no other? Ib. f. 38. l. 6.

A. D. 1096 & 1097.

A great Council in the 10th of *Rufus*, of the Bishops, Abbats and Noblemen only.

Henry the First.

P. 67.

Fol. 88. a. n. 20, 40. *Henry* I. set up by a Faction.

FRom *Rufus* he passes to *Henry* I. who, according to his understanding of Elections, was an Elected King, though set up by a Faction; for *Malmesbury* says, there were only **Five great Men, Robert Fitz-Haymon, Richard de Redvers, Roger Bigot, Henry Earl** of **Warwick**, and **Robert Earl** of **Mellent** his Brother, all *Normans*, that favored him, and by the contrivance, chiefly of **Henry Earl** of **Warwick**, he was made King, *all others sent privately to* **Robert Duke of Normandy** that he would come and be their King, or at least *reproacht Henry* *. But when he came over, and most of the great Men either did or were about to revolt from *King Henry*, *Anselm Arch-Bishop* of *Canterbury*, who had given him great assistance in raising of an Army, after he had received from him great Promises, that all Church Affairs should be left to his direction and disposing; and that he would for ever after obey the Decrees and Commands of the Pope, assembled the great Men, and so cajoled them, and the Army that he altered their Intentions; and it was from his Fidelity and Industry that *Henry* lost not the Kingdom.

* *Eadem* fol. 49. n. 10. 20. 30.

Arch-Bishop *Anselm* dissawdes the great men from setting up *Robert* D. of *Normandy*.

Robert

Robert being thus disappointed, and fearing least *Anselm* should excommunicate him, consented to a Peace, and the two Brothers were reconciled.

Florence of *Worcester* says, that the day he was Crowned by *Maurice Bishop* of *Lincoln*, he gave great Liberties to the Church and Kingdom, and commanded that *King* **Edwards Laws** should be observed, with such Amendments as his Father had amended them; and adds, that very many of the great Men sent for him over, and promised him the Crown and Kingdom, and coming, they did some of them adhere to him. But the *Bishops*, *common Soldiers*, and *English*, stuck close to *King Henry*, by whose means he raised a very great Army; but the Wisest Men on both sides consulted together, and by their Mediation, made Peace between the Brothers, on these Conditions, That **Robert** should yearly receive 3000 Marks, and that all such as had their **Earldoms** and **Baronies** taken from them in *England*, for their Fidelity to the Duke, and all those that had the like Estates taken from them in *Normandy* for their Fidelity to the King, should have them again freely, and without composition. Indeed *Mat. Paris* says the great Men of *England* (which were **Normans**) not knowing what was become of *Robert*, being gone five years in an Expedition to the *Holy Land*, and fearing to be long without Government, Henry *promising Amendment of their Laws, to restore their old Liberties and Customs, and the Laws of King* Edward, *and to confirm them*; then

Fol. 650.

His Amendments and Additions were chiefly the two Feudal Laws here before explained. Which made them Laws be desired by the *Normans*.

A Peace made between *Robert* Duke of *Normandy*, and King *Henry*.

Fol. 55. n. 20. 30.

Henry made great Promises to obtain the Crown.

then he was Consecrated and Crowned King by Maurice *Bishop of* London. And *Thomas Arch-Bishop* of *York*, **favente populo & Clero**; which brings me to the consideration of those two words from which our Author thinks he hath so much advantage, and in clearing the sense of the word *populus*, shall anfwer most what remains in his Preface. Concerning the word **Clerus**, or what is meant by that, there is no controversie between us; and though perhaps we much differ about the sense of it, yet I pass it by, and come to the word **Populus**, which *Calvin* says amongst the *Romans* did equally signifie the *Patricii & Senatores* (which were there *Magnates*, or *Noblemen*) as *Plebs & Vulgus*, the inferiour sort of People. But I shall not spend time about the foreign Notation of the word, and will therefore see whether it hath any other sense or meaning, *in our Laws and Historians*, than that our Author puts upon it; He always takes the meaning of this word **as contradistinct to Magnates, Nobiles**, &c. and understands it of the inferiour sort of *People*, or at least of those, and such as were inferiour to **Barons**, *Tenents in Capite*, and **Noblemen**. But he ought to take the meaning of **Populus**, as it is contra-distinct, to the word with which it is used, and to which it is opposed, that is **Clerus**, and then it signifies no more than **Laity**, *and they both together do import Clergy*, and *Laity*, or *Ecclesiasticks* and *Seculars*: So that the word **Populus**, here doth not denote a distinct State, or Order amongst

Lexicon Imid. in verbo.

The meaning of the word *Populus.*

amongst Secular men or Laics, but an **Order** and **State** of Men distinct from the *Eccleſiaſtics*, or the *Clergy*.

In this ſenſe 'tis uſed in King *Ina*'s Laws **Ereſt we Bebeodeth that Godes Theowas hioza ryht Regole gyman and on ryht healdon Efter tham we beodeth that ealles Folces, &c. and Domas thus ſynd gehealdene.** That is, Firſt we command that *Gods Servants* or *Miniſters* do obſerve their right Rule, and hold them to Juſtice; after them we command that all the *People*, do thus, or according to this Tenor hold the Laws and Judgments. *King Edmund* held a *great Council* at *Eaſter*, in *London*, **Eg-ther Ge Godcundza hada, Ge Woruld-cundza**, &c. *Lambart* thus tranſlates theſe words, *Tam Eccleſiaſticorum quam Laicorum*, as well of Eccleſiaſtics as Laics. *Brompton* tranſlates the whole Preface more according to the true literal meaning of the words in this manner. *Edmundus Rex congregavit magnam Synodum Dei Ordinis & Sæculi apud Lundoniam civitatem in Sancto Paſchæ Solenni, cui interfuerunt Odo, & Wulſtanus Archiepiſcopi & alii plures Epiſcopi*, &c. In *Engliſh* thus, King *Edmund* ſummoned a great Synod at *London*, of *Gods Order* and the *Secular Order* in the Holy Solemnity of *Eaſter*, where were preſent *Odo* and *Wulſtan*, *Arch-Biſhops*, and many other *Biſhops*, &c.

In the Preface to King *Edward's* Laws, the Laics in this great Council were the great *Saxons*, as is clear by what is ſaid before of their great Councils. Col. 858. n. 40.

In the ſecond part of *Edmunds* Laws, are almoſt the ſame *Saxon* words, denoting the Members of a great Council, and the ſame way turned, except that for *Sæculi Ordine*, the worldly

Lamb. fol. 58, &c.

Brompt. f. 860. n. 50. wordly *Order* or *State*, **Brompton** hath *Laicis* Laymen. Here we ſee the *Saxon* words, which expreſs **Clerus** and **Populus**, as they are uſed in oppoſition one to another do ſignifie the *Clergy* and *Laity*, the two **General States**, and **Orders**, into which all Mankind is divided.

Dugd. Monaſt. vol. fol. 32 n. 60, &c. But to come nearer to our purpoſe, *King Egbert*, having conquered the greateſt part of *England*, returning to *Wincheſter*, **Mandavit omnibus Majoribus Regnorum, que conqueſierat ut convenirent ad illum die certo Wintoniam: veniunt Wintoniam Clerus & Populus**, *& aſſenſu omnium partium coronatus eſt. Egbertus in Regem totius Britanniæ*; *Commanded all* all the great Men of the Kingdoms he had Conquered, that they ſhould meet him at *Wincheſter* on a certain day: **The Clergy and People** came to *Wincheſter*, and by the aſſent of all Parties (that is, the great Men of every Kingdom) he was *Crowned King* of *Britain*: Who were here, the **Clerus & Populus**, the **Clergy** and **People**, but the **Majores Regnorum**, the great **Eccleſiaſticks**, and **Laics** or **Laymen** of the ſeveral *Kingdoms* of *England* at that time. Having cleared the Notion of the word **Populus**, as it is uſed and joined with **Clerus** by way of *Antitheſis*, or contra-poſition, I come to his own Inſtances in his own Authors, and begin as he doth, firſt with *Mat. Paris*: The whole Relation runs thus:

p. 56. Fol. 55. n. 20, 30.

Defuncto

Defuncto itaque Rege Willielmo cum Magnates Angliæ ignorarent quod actum esset de Roberto D. Normannorum Regis defuncti fratre primogenito, qui jam per quinquennium in expeditione Hierosolymitanâ moram pertraxerat, timuerunt Domini sine regimine vacillare. Quod Henricus fratrum ultimus & Juvenis Sapientissimus, cum callidè cognovisset, congregato Lundoniis Clerus Angliæ & Populo universo, promisit emendationem Legum, quibus oppressa fuerit Anglia, tempore Patris sui & Fratris nuper defuncti, ut animos omnium in sui promotionem accenderet & amorem; & ut illum in Regem susciperent & *patronum ad hæc* **Clero Respondente, & Magnatibus cunctis,** *quod si animo volente ipsi vellet concedere, & Chartâ suâ communire illas libertates & consuetudines antiquas quæ floruerunt in Regno tempore sancti Regis* Edwardi *in ipsum consentirent, & in Regem Unanimiter consecrarent. Henrico autem hoc libenter annuente, & se id facturum cum Juramento affirmante consecratus est in Regem apud Westmonasterium in die Assumptionis Beatæ Mariæ,* **favente Clero & Populo,** *cui continuò à Mauritio Londinensi Episcopo, & Thomâ Eboracensi Archiepiscopo corona capiti imponitur.* That is, After the death of *King William*, the great Men of *England*, not knowing what was become of *Robert Duke of Normandy*, eldest Brother of the deceased King; who now had been absent five years in an Expedition to the *Holy Land*, were afraid to be long loose without Government: Which *Henry* the youngest Brother, and a Wise young Man craftily observing, having Convened the Clergy of *England*,

The Relation of *Mat. Paris* how *Henry* I. was made King.

land, and all the People, he promiſed Amendment of the Laws with which *England* was oppreſſed, in the time of his Father and Brother, latety deceaſed, that he might inflame the Minds of all Men to love and promote him, and receive him as their King and Patron, **to which the Clergy and all the great Men anſwered,** That if he with a willing mind would grant to them the Laws which flouriſhed in the Kingdom, in the time of *Holy King Edward*, they would unanimouſly agree in him, and conſecrate him King. *Henry* willingly granted this, and taking an Oath that he would perform it, was conſecrated King at *Weſtminſter*, upon the day of the Aſſumption of the Bleſſed *Mary*. **The Clergy and People** favouring him, upon whoſe Head the Crown was placed forthwith by *Maurice Biſhop* of *London*, and *Thomas Arch-Biſhop* of *York*. Upon this Relation I ſhall make ſeveral Remarks:

Florent. Wigorn. who died the 19th of *Henry* I.

Fol. 649. lin. 27. & fol. 665. lin.

Firſt, That it was not poſſible for the *Clergy*, or all the People of *England*, or any that repreſented the People of *England*, to be at this **Conſecration** and **Coronation** of *Henry*. For *Rufus* was ſlain in *New-Foreſt*, on the fourth of the *Nones* or ſecond of *Auguſt*, being Thurſday, and *Henry* was Crowned upon the *Nones*, or fifth of the ſame Month, being *Sunday*. *So that it was impoſſible for the People in two days time, at any conſiderable diſtance from* London, to have notice of *Rufus*'s death, or to meet, chooſe, and ſend their Repreſentatives to *London*, or indeed

deed for the **Bishops** and **Clergy** to come from the far parts of *England* in that time; and therefore it was only **Henry's Party**, and **Faction**, in, and about *London, that he partially calls the* **Clergy, and all** the **People** of *England.*

Secondly, I note, That it was **Clerus & Magnates cuncti**; the Clergy and all the Noblemen, which answered him (making his great Promises) that if he would with a willing mind grant and confirm by **Charter**, their **Liberties**, &c. then they would consent, and unanimously consecrate and make him King, **not one word in this place of any Populus**, but the **Great** or **Noblemen, and therefore they must be the People or Lay-men here meant.** But our Author very *unfairly* translates these words. **Ad hec Respondente Clero & Magnatibus cunctis**, only by these words, **To which it was generally answered**; hereby imposing upon and cheating his Readers into an opinion that it was the **Populus Universus**, thereby meaning the **Plebs** and **Vulgar** that made this Answer, and consented to *Consecrate Henry King.* But further, to make good what I now say, let us see who were the *Constituent parts* of the *great Council* held at *Westminster* on *Michaelmas-day*, 1102. in the second year of this King; they were **omnes principes regni sui Ecclesiastici & Secularis ordinis**; All the chief Men of his Kingdom, of the *Ecclesiastic* and *Secular*, or *Lay-Order*; or

The Clergy and great Men set up *Henry* I. not the People.

p. 60.

The unhandsome Translation of the Author.

Florent. Wigorn. f. 651. lin. 21.

or the **Clerus** and **Populus**. Or as *Eadmer*, who was then at this Council with *Arch-Bishop Anselm*, calls the Members of this very great Council, **Primates Regni utriusque Ordinis**, the prime or greatest men of both Orders, that is, the **Clerus & Populus**, or *Ecclesiastics* and *Laics*; and three or four lines before he tells us what the *Primates* of both Orders were, to wit, **Bishops, Abbats**, and the **Principes totius regni**, the *Princes*, or *chief Men* of the whole Kingdom, and therefore, **favente clero & populo** must refer to the same persons expressed before in these words, **Respondente Clero & Magnatibus cunctis**, who only consented and unanimously made him King.

Fol. 67. n. 20.

Clerus & Populus, Ecclesiastics and Laics.

Floren. Wigorn. fol. 650. l. 14.

Thirdly, That *Edward* the **Confessors Laws** here desired, were *those* **Laws which William the Conqueror had amended**; they being very pleasing and acceptable to the *Normans* (who set up *Henry*) having thereby their **Reliefs made certain, their Military Fees hereditary**, and **freed** from all **extraordinary Taxes**, &c. as hath been shewed in the Exposition of the 55 and 58 *Laws* beforementioned; but for all his fair Promises concerning these *Laws* and *Liberties* of the People, and his *Flattering, Wheadling* Speech, this Gentleman is so much taken with; his own Author tell us, that afterwards when with a *seared* and *cauterized Conscience* he had obtained the Kingdom, and *usurped upon his Brother* Robert, *who had manifest Right*,

Edward the Confessors Laws, why pleasing to the *Normans*. These amendments were Additions, not Corrections.

p. 69.

Mat. Paris fol. 61. n. 50. fol. 62. n. 10. 20. 30.

Henry I. violates his Promise.

Right, he impudently violated the Laws and Promiſes, by which he had drawn in all men to ſerve him.

Before we paſs from *King Henry* let us obſerve how *Eadmer*, that was conſtantly in the Family, and company of *Arch-Biſhop Anſelm*, and preſent at moſt of them, ſtileth the **Great Councils** in his Reign. He expreſſeth the *Great Council* at *Winchester* by theſe words. **Epiſcopis Terreque Principibus ſub uno coactis.** A great Council at *London*, **Rex adunatus Lundonie principibus Regni.** A *Council* at *Weſtminſter* thus, **Concilium Epiſcoporum Abbatum et Principum totius Regni, et Primates Regni utriuſque ordinis.** Another Council by **regni Ingenuitas.** Which two lines before he calls **Epiſcoporum Regnique Primatum Concilium.** A ſecond great Council at *London* he phraſeth **Conventus Epiſcoporum Abbatum et Procerum Regni.** A third great Council at *London* he reckons up the Members, thus, **Archiepiſcopi, Epiſcopi, et cuncti Majores Regni.** A fourth there, **Epiſcopi et Principes Regni.** A fifth great Council at *London* he calls **Regnum Anglie.** A great Council at *Windſor* thus, **Epiſcopos et Principes Anglie in unum apud Windleſhoram fecit venire.** Again, **Rex juſſit omnes Epiſcopos et Principes totius Regni ad Curiam ſuam** ſub uno venire. At *Salisbury* **Factus eſt Conventus Epiſcoporum Abbatum et Principum totius Regni.** A ſixth great Council

Fol. 62. n. 10.
Fol. 65. lin. 8.
Fol. 67. n. 10.
Ibid. n. 20.
Fol. 70. n. 20.
Fol. 91. n. 20.
Fol. 94. n. 30.
Fol. 102. n. 30.
Fol. 105. l. 3.
Fol. 109. n. 30.
Fol. 114. n. 30.
Fol. 117. n. 30.
Fol. 118. n. 20.

Council at *London*, **Episcopi Abbates** [illegible] **Nobiles quique Lundonie adunati** [illegible] After this manner *Florence* of *Worcester* expresseth the Great Councils in this King's Reign, though he mentioneth not a fourth part of them. In all these not the least word of the **Commons**, much less of their being an **Essential part** of the great **Councils** or **Parliaments** of those times.

p. 64. His next *Instance* is of *King Stephen*, that he was *assensu cleri & populi in Regem electus & per Dominum Papam confirmatus*, That he was chosen King by the assent of the People and *confirmed* by the *Pope*. 'Tis well this Gentleman brings in the *Pope* to help out his Title, for he mended all *crackt Titles* of *Usurpers*, and was most commonly the *Author* or *Abettor* of our *ancient Rebellions* in *England*. The words are taken out of the beginning of *King Stephen*'s *Charter of Liberties* transcribed by *Malmesbury*. *Ego Stephanus Dei gratia assensu Cleri & Populi in Regem Angliæ electus, & a Domino Willielmo Archiepiscopo Cantuariæ, & Sanctæ Ecclesiæ Romanæ Legato consecratus, & ab Innocentio sanctæ sedis Romano Pontifice postmodum confirmatus. Respectu & amore Dei Sanctam Ecclesiam liberam esse concedo, & debitam reverentiam illis confirmo*, &c.

Hist. Novel. fol. 101. b. n. 20. Notwithstanding what he says of himself in his Charter, King *Stephen* was not elected.

And indeed most of the *Liberties* granted in this *Charter* are to the *Church*: for by the contrivance of two or three *great Churchmen* he was advanced to the Throne, though King *Henry* upon his Death-bed, being interrogated about a *Successor*, gave all his

Ibid. fol. 100. b. n. 30.

Estate

Eſtate here, and beyond Sea, to his Daughter **Maude** the **Empreſs**, and notwithſtanding all the *Nobility*, and amongſt them *King Stephen* himſelf, had ſworn Fealty to her; yet by the intereſt of his *Brother Henry Biſhop of Wincheſter*, (without which his Attempt had been fruſtrated) he was made King. He brought off *Roger Biſhop* of *Salisbury*, a great and powerful Prelate, who with *William de Pont-Arche*, Keeper of *King Henry*'s Treaſure, which was 100000 *l.* in Money, beſide Gold and Silver Veſſels, of great weight, and ineſtimable Price. *Malmesbury* that flouriſhed and wrote at this time, ſays, that by his own dexterity, and the artifice of his *Brother*, and *Roger Biſhop* of *Salisbury*, and the advantage of this Money, he inclined the Minds of the Noblemen much towards him, and *raiſed* an **Army** chiefly of **Flemmings** and **Britains**; but ſpeaks not of any *great Council* called, either to *elect him King*, or for the *Solemnity* of his *Coronation*; At which there were preſent onely *three Biſhops*, the *Arch-Biſhop* of *Canterbury*, and the *Biſhops* of *Wincheſter* and *Salisbury*, no *Abbats*, and but a few of the *great Noblemen*: which was performed *December* 22. *King Henry* dying the firſt of that Month, there being but 22 days time, a ſhort ſpace for the People all over *England*, to have notice, meet, chooſe, and ſend their Repreſentatives, if any ſuch had been at that time: but it is clear from the Story, he was Set up and Crowned by a Faction, though he himſelf ſays in this Charter, he was elected by the *Clergy* and *Laity*, which muſt

Ibid. fol. 100. b. n. 30.

Henry Biſhop of *Wincheſter* the great Inſtrument in ſetting up King *Stephen*.

Ibid. a. n. 40. & fol. 101. a. l. 5.

Ibid. n. 10. & n. 40. now at leaſt 150000 *l.*

Ibid. n. 40. 50. & b. lin. 5.

Stephen ſet up by a Faction.

must be the *Nobility*; for here is not the leaſt mention of the *Milites* or *liberi homines*, the Knights or Free-men, having any thing to do as Actors in this Affair, in the whole Relation.

Fol. 47. n. 20. 30. 40, &c. Fol. 121. b. throughout. The Relation how *Henry* I. was made King, out of *Paris*, and *Huntingdon*.

Mat. Paris in his Narrative of this Tranſaction, in many things follows *Henry*, at this time *Archdeacon* of *Huntingdon*, who ends his Hiſtory with the death of this King (ſave that *Paris* mentions a Convention of the *Magnates*, or *Great Men* at *London*, and that *Stephen* promiſed the Melioration of the Laws, according to their Will and Pleaſure, which *Huntingdon* does not) who tells us that all the *Biſhops*, *Earls*, and *Barons* that had ſworn Fealty and done *Homage* to the Daughter of *Henry* and her Heirs, conſented that *Stephen* ſhould be King; who tempting God, had invaded the Crown. *Radulphus de Diceto* Dean of St. *Pauls*, *London*, who lived in the Reign of King *John*, about the year 1210, adds, That *Hugh Bigot*, being *Steward* of the *King's Houſhold* (he dying in *Normandy*) haſted into *England*, and made Oath before the *Arch-Biſhop* of *Canterbury*, That *King* Henry *on his Death-bed, upon ſome differences which had happened between him, and his Daughter the Empreſs, did Diſinherit her, and made* Stephen Earl *of* Bolloin *his Heir. Whereupon* William Arch-Biſhop *of* Canterbury, *giving too much credit to the words of the* Steward, *Conſecrated* Stephen *Earl of* Mortainge, *King at* Weſtminſter: Here the *Noblemen*, or *Temporal Barons*, muſt be the *People*, that is the *Laity* that aſſented to *Stephen*'s being King; *for*

Col. 505. n. 40. 50.

The Arch-biſhop of *Canterbury* abuſed by a Story from *Roger Bigot*.

He was Earl of *Bologne* and *Mortagne*.

The Noblemen the People or Laity.

there

there are no other but the Biſhops and theſe, ſaid to have done any thing in this Matter; and it will be made appear upon examination of our *Authors Records*, that the People were not repreſented, as at this day, in great Councils or Parliaments, before the 49th of *Henry* III. after the Conqueſt, and therefore no other Men can be underſtood by *Populus* the People or Laity than the *Nobility*. Nor can any diſcerning Perſon that duly conſiders theſe Relations of *Stephen*'s advancement to the Crown, ever believe he was duly choſen or elected, but on the contrary, muſt confeſs, that he uſurped it by the aſſiſtance of a Faction.

And whether he played not the ſame Pranks Uſurpers uſe to do for their own ſecurity and gratifying their Friends, any man that will may be ſatisfied by the Hiſtorians of thoſe times.

Another *Inſtance* he brings out of *Roger de Hoveden*, **congregato Clero & Populo** *apud Clarendon*. Theſe words he only cites, and ſays the *Learned Selden* calls this a full Parliament; 'tis granted to be a full great Council, as *Fitz-Stephens* calls it, or a Parliament of thoſe times; but yet for all theſe two words, he ſo much inſiſts upon (though he never underſtood the meaning of them in this place.) The *Commons* as at this day were not an Eſſential part of this *Parliament*: Nor are *meant* by, nor *included* in the word *Populus*. To clear the point we muſt make a large rehearſal of ſomewhat agitated in this general or great Council, and the occaſion of calling it. *Becket Arch-Biſhop* of *Canterbury* had promiſed *King Henry* II. at *Woodſtock*, that he would really and without fraud obſerve his Laws. *Et paulo poſt congregato Clero & Populo apud Clarendon, pœnituit*

Fol. 282. b. n. 10. *Hoveden* was a Prieſt and a Lawyer, and a Domeſtick in the Family of *Henry* II.

Ibid. The Story of *Tho. Becket* Arch-Biſhop of *Canterbury* at the Council of *Clarendon*.

tuit Archiepiſcopum quod ipſe conceſſionem illam fecerat Regi. Et volens reſilire a pacto, dixit ſe in illâ conceſſione graviter peccâſſe, & quod in hoc amplius non peccaret. Unde Rex plurimum in irâ adverſus eum commotus, minatus eſt ei & ſuis exilium, & mortem. Venerunt ergo ad Archiepiſcopum, Salisburienſis & Norvicenſis Epiſcopi & Robertus Leyceſtriæ, & Reginaldus Cornubiæ Comites, & duo Templarii ſcilicet Richardus de Haſtings, & Toſtes de ſancto Homero, & lachrymantes provoluti ad pedes Archiepiſcopi, petebant, ut ſaltem propter honorem Regis, veniret ad eum, & coram populo diceret, ſe leges ſuas recepiſſe. Precibus igitur tantorum virorum Archiepiſcopus victus venit ad Regem, & coram clero & populo dixit *ſe leges illas, quas Rex avitas vocabat, ſuſcepiſſe. Et conceſſit ut Epiſcopi leges illas ſuſciperent & ut illas cuſtodire promitterent.* Cunc precepit Rex univerſis Comitibus & Baronibus Regni, ut irent cozas & recozdarentur legum Henrici Regis avi ſui & eas in ſcripto redigerent; quod cum factum fuiſſet *precepit Rex Archiepiſcopis, & Epiſcopis ut Sigilla ſua apponerent Scripto illi, & cum cæteri proni eſſent ad id faciendum, Archiepiſcopus Cantuarienſis juravit quod nunquam, ſcripto illi apponeret, nec Leges illas confirmaret.* That is, and a little after (Becket had granted to obſerve the Kings Laws) the *Clergy* and *People* or *Laity*, being Convened at *Clarendon*, the Arch-Biſhop repented that he had made ſuch a Conceſſion to the King, and intending to run back from his Bargain, he ſaid he had grievouſly ſinned, in that Conceſſion

ceſſion, and that he would ſin no more in the like kind; whence the King was much moved with Anger againſt him, threatning Baniſhment and Death to him and his: therefore the *Biſhops* of *Salisbury* and *Norwich*, the *Earls* of *Leiceſter*, and *Cornwall*, and *two Templars*, *Richard de Haſtings*, and *Toſtes de Sancto Homero*, came to the Arch-Biſhop, and weeping, caſt themſelves at his feet, and beſeeched, that at leaſt for the Honor of the King, he would come to him, and ſay before the People, he would receive his Laws. **The Arch-Biſhop, overcome by the intreaty of ſo great Men, came to the King, and before the Clergy, and People, or Laity, ſaid**, *He would receive thoſe Laws which the King called Ancient*; and he granted that the Biſhops ſhould receive thoſe Laws, and Promiſe to keep them. *Then the King commanded* **all the Earls and Barons of the Kingdom, that they ſhould go out of the place where they were**, and recount or call to mind the Laws of King *Henry* his Grandfather, and reduce them into writing, which when they had done, *the King commanded the Arch-Biſhops and Biſhops*, that they ſhould put their Seals to that Writing, and when the reſt were ready to do it, the *Arch-Biſhop* of *Canterbury* ſware that he would never ſet his Seal to that Writing or confirm thoſe Laws.

There were only the King, Biſhops, Earls, and Barons together.

The Earls and Barons were commanded out to prepare thoſe Laws which the Arch-Biſhop had promiſed before them, the King and Biſhops.

By theſe paſſages it is evident that the Arch-Biſhop was urged to come to the King and ſay **coram populo**, before the *People* or

Laity, that he received the Kings Laws, and he comes to the King and confessed **coram Clero, & Populo**, before the Clergy, and People or Laity, that he had received them. Then the King *commanded all* the **Earls**, and **Barons** of the *Kingdom* (which must be the *Populus*, the People or Laity here meant, and no other) *to go out from the Clergy, where they were altogether*, and recount the Laws of his Grandfather King *Henry*, and put them in Writing. And when that was done, commanded the *Clerus*, the *Bishops* only, to Seal them. From whence 'tis most clear, that the Earls and Barons only, in this great Council were expressed and meant by the word *Populus*, People or Laity.

Who were the *Clerus & Populus* in the great Council of *Clarendon*.

Fol. 100. n. 20.

And agreeable hereunto, *Matt. Paris* says of this very great Council or Parliament, *An. Dom.* 1164. 10 *Hen.* 2. *In præsentia Regis Henrici apud Clarendon* 8 *Calend. Feb. præsidente Johanne de Oxonia, de mandato ipsius Regis* **præsentibus etiam Archiepiscopis, Episcopis, Abbatibus, Prioribus, Comitibus, Baronibus, & Proceribus Regni, facta est recognitio**, &c. That is, in the year of our Lord 1164. in 10 *Hen.* 2. in the presence of the *King* at *Clarendon*, on the 26th of *January*, *John* of *Oxford* presiding according to the *Kings Mandate*, and the *Arch-Bishops*, *Bishops*, *Abbots*, *Priors*, *Earls*, *Barons*, and *Great Men* of the Kingdom present, there was made a *Recognition*, &c.

Mat. Paris enumerates the Constituent parts of the Parliament without any Commons.

What can be more clear *by this enumeration of the constituent parts of this full Parliament*

ment, (as our Author and Mr. *Selden* agree it to be) then that the **Commons** *were* **none** *of them*, and that the **Clerus & Populus** in *Hoveden* were only the *Clergy* and *Lay Nobility*.

The last *Instance* is of *King John*, that he was Crowned *mediante tam* **Cleri quam populi** *unanimi consensu & favore*. By the unanimous consent of the Clergy, and People or Laity. The same *Roger de Hoveden* a *Lawyer*, and Favorite of *Henry* II. in whose Court he lived until the Kings death, who continues his Annals to the fifth year of *King John*, in which he died, gives us an account, both how *King John* obteined the Crown, and also of his Coronation. *King John* when his *Brother Richard* died of the Wound he received before *Chalutz Castle* in *Limosin*, was in *Normandy*; from whence he immediately dispatched *Hubert Arch-Bishop* of *Canterbury*, *William Marescal Earl* of *Strigoil*, *Geofry Fitz-Peter*, and *other Barons*, to keep the Peace of *England*, *who caused Citizens*, *and Burghers*, *Earls*, *Barons*, *and Free-men*, *to Swear* Fealty, *and the Peace to* John Duke *of* Normandy, *the Son of* King Henry, *the Son of* Maude *the Empress*, *against all men*. And the same three, meeting at *Northampton*, Convented before them such as they doubted of, namely, David *Brother to the King of Scots*, *Richard Earl* of *Clare*, *Ranulfe Earl* of *Chester*, *William Earl* of *Tutesbury*, *Walran Earl* of *Warwick*, *Roger Constable* of *Chester*, *William de Mowbray*, and *many other Earls*, and *Barons*; and assured them that *John Duke*

Pitsius An. Dom. 1204.

Fol. 450. b.n. 10.20.30.40. 50.

Ibid. fol. 451. a. n. 10.20.30.

How King *John* obteined the Crown.

Ibid. of *Normandy*, would do every one of them right, if they would keep Faith and Peace with him. On this condition the ſaid *Earls* and *Barons* ſware Fealty and faithful Service to *John Duke* of *Normandy*, againſt all Men. Not long after *Duke John* came into *England*, and there met at *London*, in expectation of him, *Hubert Arch-Biſhop* of *Canterbury*, *John Arch-Biſhop* of *Dublin*, *William Biſhop* of *London*, *Gilbert Biſhop* of *Rocheſter*, *John Biſhop* of *Norwich*, *Hugh Biſhop* of *Lincolne*, *Euſtachius Biſhop* of *Ely*, *Godfrey Biſhop* of *Wincheſter*, *Henry Biſhop* of *Exceſter*, *Sefrid Biſhop* of *Chicheſter*, *Geofry Biſhop* of *Coventry*, *Savaric Biſhop* of *Bath*, *Herbert Biſhop* of *Salisbury*, *Phillip Biſhop* of *Dureſme*, *Roger Biſhop* of *St. Andrews* in *Scotland*, and *Henry Biſhop* of *Landaff*: *Robert Earl* of *Leyceſter*, *Richard Earl* of *Clare*, *William Earl* of *Tutesbury*, *Hamelin Earl Warren*, *William Earl of Salisbury*, *William Earl* of *Strigoil*, *Walran Earl* of *Warwick*, *Roger Bigot Earl* of *Norfolk*, *William Earl* of *Arundel*, *Ranulfe Earl* of *Cheſter*, *and many Barons.* At which time A. D. 1199. *Hubert Arch-Biſhop* of *Canterbury* Conſecrated and Crowned *John Duke* of *Normandy*, *King* of *England*, upon *Aſcenſion-day*, being the 27th of *May*, in St. *Peters* Church at Fol. 197. n. 20. &c. *Weſtminſter*. *Matth. Paris*, who wrote toward the end of the Reign of *Henry* III. and died in the year 1259. after he had written from *Haveden*.

What

What is here related sayes; *Congregatis itaque apud Lundonias in adventu ejus, Archi-Episcopis, Episcopis, Comitibus, Baronibus atque aliis omnibus qui ejus Coronationi interesse debuerunt, Archi-Episcopus stans in medio omnium dixit*, &c. That is, the *Archbishops, Bishops, Earls and Barons, and all others that ought to be present at his Coronation, meeting at London*, the Arch-Bishop standing in the middle of them all, made a Speech to them, and perswaded them to **Elect** *John* Duke of *Normandy King*, which they did, and he was Crowned as was said before: **He was set up and Crowned by Arch-Bishop Hubert and his Faction,** *Arthur* Duke of *Britain*, Son of *Geofry* his Eldest Brother, being the Right Heir, and then about Fourteen years of age. But here is not the least mention of a **Great Council,** or the **Commons**, unless it be said, this Convention be one, as most certainly it was not, here were the Bishops and Temporal Lords only present, and Actors in this Transaction. There might be a great many of the *Commons Spectators* at this Solemnity; but the Bishops, Earls and Barons, were they, which acted and contrived the Crowning and making him King, and they only were the **Clerus** and **Populus**, the Clergy and People, or Laity here meant, the Commons having done nothing in this Matter, for ought what appears in the Story. *Lastly*, What our Author tells us about the Confirmation of the **Dictum de Kenelworth**, it was after the

Mat. Paris his Account how K. *John* obtained the Crown.

K. *John* an Usurper.

p. 65.

49 of *Hen.* III, when the *Commons* were Summoned as a Third Eſtate, and were a Conſtituent part of the Parliament, and ſo nothing to the purpoſe.

Having

Having dispatched the Second Proposition, and Examined his *Preface*, I shall still persue his Method, and see, Whether by the *Records* he makes use of, he hath proved his First Proposition, that is, the Commons, as Represented by Knights, Citizens and Burgesses, to have been a Third Estate, or an Essential and Constituent part of the Parliament, before the 49 of *Hen.* III. p. 72.

His First Argument *Considered.*

THe *Authors First Argument* is, from the Claym and Prescription of the **Burrough of St. Albans**, in the 8th of *Edward* the Second, that it had sent **two Burgesses to Parliament, as other Burroughs had**, as well in the time of his Father King *Edward* the First, as in the time of his Progenitors, and if so, in the time of King *John his Grandfather, and so before* Henry *the Third*; by what he hath laid together, by picking here a piece and there a piece out of this Record, he hath made a very specious Argument to prove there were, as at this day in the time of *King John* at least, *Burgesses sent to the Parliament*: and if there were no more in the Record then what he hath Transcribed, I could not but be of his mind. The whole Record here follows, p. 3. & 7, 8, &c.

Ad

Parl. 8 Ed. 2. n. 233. The Petition of the Burgesses of St. Albans

Ad Petitionem Burgensium villæ de Sancto Albano, *Suggerentium Regi, quod licet ipsi* **tenent villam predictam de Rege in capite,** *& ipsi sicut cæteri Burgenses Regni ad Parliamenta Regis cum ea summoniri contigerit,* **per duos Comburgenses suos venire debeant,** *prout totis retroactis temporibus venire consueverunt pro* **omnibus servitiis Regi faciendis**, *quæ quidem* **servitia**, *iidem Burgenses & Antecessores sui Burgenses villæ prædictæ, tam tempore Domini* Edwardi *nuper Regis Angliæ, patris Regis, & progenitorum quam tempore Regis nunc semper ante instans Parliamentum, ut præmittatur, prestiterunt; Nomina quorum Burgensium sic prædictâ villâ ad Parliamenta Regis venientium, in Rotulis Cancellariæ, semper irrotulata fuerunt. Nihilominùs Vicecomes Regis comitatûs Hertfordiæ, ad procurationem, & favorem Abbatis de* Sancto Albano, *& ejus consilium, Burgenses prædictos præmunire, ceu nomina eorum retornare,* **ut ipsi servicium suum predictum facere possunt** *penitus recusavit, in contemptum Regis & Burgensium prædictorum præjudicium &* **exheredationis periculum** *manifestum, super quo petunt remedium oportunum.*

R. est per Consil.

Responsio.

Scrutentur Rotuli, &c. *de Canc. si temporibus progenitorum Regis, Burgenses prædicti solebant venire, vel non. Et tunc fiat eis super hoc Justicia, vocatis evocandis* **si necesse fuerit.**

In

In Engliſh *thus*;

Upon the *Petition* of the Burgeſſes of the Town of St. *Albans*, ſuggeſting to the King, *That although they* **hold the Town aforeſaid of the King in Chief**, and they as other Burgeſſes of the Kingdom ought to come to the Kings Parliaments, when they ſhould happen to be Summoned, by two of their *Fellow Burgeſſes*, as they were uſed to do in all paſt times, **for all Services which were to be perfoꝛmed** *to the King*. Which **Services** the ſame Burgeſſes and their predeceſſors, Burgeſſes of the ſaid Town, have performed as is before declared, *as well in the time of* Edward *late King of* England, *Father of the King and his Progenitors, as in the time of the King that now is, alwayes before this preſent Parliament:* The Names of which Burgeſſes for the ſaid Town ſo coming to the Kings Parliaments were always inrolled in the Rolls of the Chancery; Neverthelefs, the Kings Sheriff of the County of *Hertford*, by the favor and procurement of the Abbot of St. *Albans*, and by his advice *refuſed to warn the ſaid Burgeſſes, or return their Names according to his duty*, **that they might do their Service aforeſaid**, in contempt of the King and prejudice of the Burgeſſes aforeſaid, and *manifeſt danger of* **diſinheriting** *of them*, for which they crave an opportune Remedy.

The Controverſies about Members of the Lower Houſe were then referred to the King and Council, in the time of *Edw.* 2.

It

The Answer to the Petition.

It was Answered by the Council;

Let the Rolls of Chancery be searched, &c. *if in the time of the Kings Progenitors, the Burgesses aforesaid used to come or not, and then let them have Justice in this Matter, and such as have been called, may be called, if there be necessity.*

We find, in this Record, that the *Burgesses* of St. *Albans*, and of the other *Burroughs*, did, and ought to come to the *Parliament* by *reason of their* **Tenures in capite**, *for that it was in lieu* **of all other services** *to be performed to the King in respect of that Tenure.* And then they say in this Petition, that the Burgesses of St. *Albans* had performed these Services, as well in the time of *Edw.* I. and his Progenitors, as in the time of *Edw.* II. always before that present Parliament, and urge the neglect of the Sheriff in not giving notice to the Burgesses, and returning their Names as a prejudice to them, *and a manifest danger of their being* **disinherited** *of this* **easie service**, and having some other great or more hard service put upon them, which in all probability must have been, if once they had lost this service of coming to the Kings Parliaments, which was in its self a discharge from all other Services.

All this our Author hath concealed, to impose upon his Readers, and to make his Assertion to be believed by all such as are inclinable

inclinable to it, or that have a veneration for our *English Records*; for 'tis evident, the **Burgesses** of **St. Albans**, claimed not, nor prescribed to come to *Parliaments* **meerly** as from a **Burrough**, but as from *a Town that held in Chief of the King*; and this *Service* was incident to their Tenure, and was such as the *Kings Progenitors* had accepted *in lieu of all Services due by reason thereof.*

St. *Albans* sent Burgesses to Parliament, not as a *Burgh*, but as a *Town*, that held of the King in Capite.

And further, the Answer to this Petition is Remarkable, for if it did appear by the Chancery Rolls, that the Burgesses of St. *Albans* were wont to come to Parliaments in the times of the Kings Progenitors, *then such as have been called, should be called* **when there was necessity** *for it.* Hence 'tis clear, the **King** and his *Council were* **equally Judges** *when it was* **necessary to call them**, *and for* **them** *to come*; *as they were of their right, and pretences to come.*

King and His Council Judges, whether, and when Burgesses ought to come to Parliaments.

The

The Second Argument *consi-dered.*

p. 13, 14, 15, 16. OUr Authors *Second Argument* is grounded upon ſome parts of three ſeveral Records in the 15th of King *John*, which he hath again picked out to ſerve his purpoſe and impoſe upon his Readers. Yet in his

p. 158, 160. *Appendix* he hath Printed two of theſe three Records, and wholly omitted the third, *viz.* the moſt neceſſary one that concerns

p. 14. lin. 2. the *Cities* and *Burghs*, which he calls the **great Record**, and by which he endeavors to prove, that the great *Cities* and

Ibid. lin. 13. *Burroughs*, *did ſend their* **Priories** and **Repreſentatives** to the *Common Council*, or *Parliament*, before the 17th of *King John*; but inſtead of the Record it ſelf, he Prints and Publiſhes only the Direction of it to the Cities and Burroughs. And ſayes, that the

Ibid. p. 15. King being *in partibus tranſmarinis*, beyond the Seas wrote to 13 **Cities**, and **Burghs**, there named, and all the great Burroughs of the Demeaſnes of the King, giving them an account of his proceedings and ſucceſſes in his War againſt the French, and that the **Pope**, by his Letters, had Releaſed the *Interdict* under which the Kingdom then Lay, which the King had then ſent to *Peter* Biſhop of *Winton*, Chief Juſtice of *England*; and therefore

therefore desired that they would believe what the Bishop should speak to them, that **Concilium & auxilium vestrum**, *ad honorem nostrum & vestrum & statum regni nostri in melius commutandum efficaciter super hoc apponatis*, and that *Majori festinatione expediretur Iesse Apud Rupellam 6 die Martii*, that they might effectually give their Advice and Ayd concerning the Relaxation of the Interdict, to the Kings honor and their own, for the bettering the State of the King, and that very speedily; Witness Our Self at *Rochell* the 6th day of *March*. Ibidem, & p. 16.

None of **these last Words**, nor indeed not many of the former, do belong to, or are to be found in this **great Record** (as he calls it) but he takes them out of another, and applyes them to this; and therefore for the discovery of this *Artifice*, and *unhandsome dealing* with, *and* **false Application** of **Records**, I must, though it prove tedious to the *Reader*, Transcribe both these Records, the first whereof follows.

Rex Baronibus, Militibus & omnibus fidelibus totius Angliæ salutem, sciatis quod die Martis proxima ante medium quadragesimæ suscepimus Literas Domini Papæ in partibus Piciaviæ de factâ relaxatione Interdicti Angliæ, quas destinavimus venerabili Patri Petro Winton, *Episcopo Justiciario nostro, & vos rogamus Attentius tanquam dilecti & fideles nostri, de quorum Dilectione & fidelitate plene confidimus,*

Pat. 15 Johannis, p. 2. m. 2. *Richard* I. dyed *Apri.* 6. 1199. The Writ to the Nobility, &c.

K. *John* committed the Custody of *England* to *P.* Bishop of *Winton*, and made him Justiciary during pleasure at *Portsmouth*, Feb. 5.

Pat. 15 Johannis, m. 4. n. 11, 12.

quatenus secundum quod Idem Episcopus vobis dicet Concilium & Auxilium vestrum, *ad honorem nostrum & vestrum, & statum Regni nostri in melius commutandum efficaciter super hoc apponatis, ut vobis inde, ad uberes teneamur gratiarum Actiones, & ut Dilectionem, quam hactenus erga nos habuistis in hoc, merito debinc commendaremus.* Unicuique vestrum si fieri potest, Literas nostras super hoc transmisimus, *sed ut negotium illud quod & nobis & vobis ad commodum cedat & honorem cum majori expediretur festinatione, has Literas*, &c. *Teste meipso apud Rupellam* vi. Die Martii.

Vid. Gloss. verb. fidelis, The King Wrote particularly to *William Marshall*, and all the Earls. At this time the Interdict was not actually Released, but upon the 20 of *June* following, *Mat. Paris* fol. 249. n. 50. *S. cundum quod idem Episcopus vobis Dicet.*

The King to Barons, Knights, and to all * Feudataries, or Vassals through *England*, *Greeting*. Know ye, that being in *Poitou* on Tuesday next before the Middle of *Lent*, We received the Popes Letters concerning the Release of the Interdict of *England*, which We sent to the Reverend Father, *Peter* Bishop of *Winchester*, our Justiciary; and We require you earnestly, as Our well beloved, and Feudataries, of whose Kindness and Fidelity We have a full confidence, that according to what the same Bishop shall say unto you, *ye may effectually give your advice and aid in this matter*, to our honor and yours, and for changing the state of the Kingdom into the better: That therefore We may be obliged to give you greater thanks, and that in this Affair We may worthily commend the Kindness you have had towards Us hitherto: We had sent

sent Our Letters to every one of you, if it might have been done, *but that the business might redound to Our and your honor and profit, it ought to be dispatched with greater hast.* Witness my Self at *Rochell* the Sixth day of *March.*

After this Record in his *Appendix, he subjoynes the Names of the Cities and Boroughs with the same Circumstances, and after the same manner as they follow at the bottom of the next Record*, upon the Patent Roll of this year in the *Tower*, there being upon that same Roll not the least mention, or note of them under this foregoing Record.

p. 158, 159. The Author makes one Record out of two pieces of Different Records, from which being put together, he frames this Argument

Rex probis hominibus Cant. salutem, sciatis Nos & Fideles nostros quos nobiscum adduximus in Pictav. sanos esse & Incolumes & in gaudium & Lætitiam amicorum, & confusionem inimicorum nostrorum. Negotia nostra gratiâ Dei incepimus expedire, Die autem Dominicâ proximâ ante medium Quadragesimæ Obsedimus castrum de Milesen, quod Porcelinus de Mansy contra nos munierat, & nos die Martis sequenti castrum illud vi cepimus, & ibi suscepimus per Manus Fratris William *de Sancto Audoeno Literas Domini Papæ de facta Relaxatione interdicti in Anglia quas destinavimus V. P. N. P. Episcopo* Winton *Justiciario nostro; & vos rogamus attentius*, quatenus secundum quod Idem Episcopus vobis scire faciat, *ad Interdictum illud Relaxandum in* prestando Nobis subsidium efficaciter impendatis. *Ita quod Dilectionem vestram*

Pat. 15 Johannis, p. 2. m. 2. The Kings Letter to the Cities and Burghs.

No Concilium or Auxilium.

veſtram merito commendare debeamus. Scitote quod præſtiteritis, & quod nobis ad hoc feceritis, plene vobis reddi faciemus cum gratiarum actione. *Teſte Meipſo apud Rupellam viii. Die Mart.*

Eodem modo ſcribitur
- *Majori & Baronibus* Lond.
- *Majori & probis hominibus* Winton.
- *Probis hominibus* Northampton.
- Linc.
- Ebor.
- Oxon.
- Glouc.

Eodem modo ſcribitur omnibus Burgis & Dominicis Regis.

- Heref.
- Exon.
- Wigorn.
- Cantebr. & Hunt.
- Briſtol.
- Norwic.

Dat. eadem

The *King*, To the Good Men of *Canterbury*, Greeting. Know ye, that We and Our Feudataries, or Soldiers, which We brought with Us into *Poiction*, are ſafe and ſound, And to the Joy of Our Friends, and Confuſion of Our Enemies, by the Grace of God We have entered upon our Buſineſs. On Sunday next before Mid-Lent We beſieged the *Caſtle* of *Mileſeu*, which *Porcelin de Mauſy* had Fortifyed againſt Us, and on the Tueſday

Tuesday following We took it by force; And there We received it by the hands of the *Brother* of *William* of St. *Owen*: The *Popes* Letters about Releasing the Interdict in *England*, which We have sent to Our *Reverend Father* Peter *Bishop of* Winchester, Our *Justiciary*. And We earnestly require you, that according to what the **same Bishop shall give you to understand**, you effectually apply your selves to give us a *Subsidie*, toward the Relaxation of the Interdict, so that We may worthily commend your Kindness, *knowing, that what you shall give, or lend, or do for Us, upon this occasion,* **shall be fully repaid**, *with Thanks*. Witness, Our Self at *Rochell* the 8th day of *March*.

See the Kings Letter directed to *William* Earl Marshall. *Rot. pat. 15 Johannis*, p. 2. m. 1.

Vobis scire faciat, not *vobis* Dicet

The King Wrote in the same manner

To the Major and Barons of *London*.
To the Major and Good-Men of *Winchester*.
To the Good-Men of *Northampton*.
Lincoln.
York.
Oxford.
Gloucester.

After the ſame manner the King Wrote t
all *Burghs* which held of him in *Ca*
pite.

Hereford
Exceſter
Worceſter
Cambridge, and
Huntington
Briſtol
Norwich.

} Of the ſame Date.

The Author unhandſomly annexeth the Direction and latter part of the Record to the Burghs, to the Writ directed to the Barons, p. 159. & p. 14, 15, & 16. jumbling and mixing them together, as one Record.

This Record or Letter of the *King* to th
Cities, and *Boroughs*, our Author hath co
cealed, *and* (as I intimated before) *placi*
under the firſt Record, or Letter directed to th
Barons, Knights, &c. *The laſt part of this Re*
cord, concerning the Cities and Burroughs, Ea
dem modo ſcribitur, &c. *as before-recited, an*
makes it part of that Record. Theſe two Re
cords are very much different one from th
other, and differently worded. In the firſt
the Barons, Knights, *&c.* were to do *Secun*
dum quod **Epiſcopus diceret**, according
to what the Biſhop ſhould ſay, or ſpeak
to them, and **concilium & auxilium ap**
ponere, *to give Advice and Ayd.* In the ſe
cond, to the Cities, and Boroughs, the Citi
zens and Burghers, were to behave them
ſelves *ſecundum quod Epiſcopus* **ſcire iſdem**
faceret, According to what the Biſhop
ſhould give them to underſtand, by
ſending to them in all probabilty theſe Let
ters, and inforcing them by one of his own

to be Read in their Common Halls, or Burghmotes, to perſwade them, *ad Interdictum relaxandum* **efficaciter ſubſidium impendere**, **effectually** to yield their Aſſiſtance towards the Releaſing the Interdict, and ſo as the King ſayes **quod præſtiteritis ad hoc plene vobis reddi faciemus**, that what they contributed he would fully repay them. And this Letter to the Cities, *&c.* beares date the 8th of *March*; whereas the Letter or Record he uſes to ſerve his turn, to the Barons, *&c.* bears date *March* 6th, two days before, and ſo it is upon the Roll. p. 16.

This Letter to the Cities and **Burghs which held of the King in Capite**, was only to **borrow Money** *of them towards the charge of releaſing the Interdict.* Nor hath it any wayes the Form of a Precept, or Writ of Summons to a Great Council or Parliament: *Nor is there in it the leaſt hint, or directions* given to the Cities or Boroughs **for ſending their Proxies and Repreſentatives** (as he calls them) *to any Great Council*: Nor doth it direct, that every individual Citizen or Burgeſs, or any at all, ſhould go to hear what the **Biſhop would ſpeak** to them; But he was **to let them know the Kings mind** by Meſſage, or Writ to them, to lend the King Money upon this particular occaſion; And yet he confidently affirms, p. 20. he hath proved, that the Citizens and Burgeſſes had their Summons to Parliament 16 *Johannis*, by a **particular Writ** (meaning this) **diſtinct** from the Lords.

They were *ſubſidium impendere* only, not *Conſilium & Auxilium apponere*, as 'tis ſaid in the Writ to the *Barons*.

p. 14.

I confeſs, the firſt *Record* carries with it much

much probability that *Peter Bishop of Winchester*, had Commission and Authority to call a Great Council, and that this very Letter was a direction to that purpose; and a short Narrative concerning the Interdict will make it clear. The *Original* of it, was a *Quarrel* between *King John* and the * Pope, about making an Arch-Bishop of *Canterbury*; the King was very desirous to have *John de Grai Bishop* of *Norwich*, to be *Arch-bishop*. And gave the *Monks* a *Conge D'esire*, who unanimously choose him, *and the Prior declared him elected*; yet some of the Monks had clancularly chosen one **Reginald**, their Sub-Prior, Arch-Bishop, both parties apply themselves to the **Pope**, to confirm their Elections: he cassates both, and commands the Monks of both parties, by vertue of their Obedience, and under a Curse, to choose **Stephan Langton** a *Priest*, *Cardinal*, **Arch-Bishop**, and they fearing to be Excommunicated, Elected him, though against their Minds, whom the **Pope** Consecrated, and Writes to the King to receive him to the *Arch-Bishoprick*, being Canonically Elected. *At which, being very angry, he charged the Monks with Treason for choosing his professed Enemy Archbishop.* Who, though an English Man, was alwayes Educated at *Paris* amongst his Enemies; *and expells them the Kingdom as Traytors, and Writes to the* **Pope** *that he had subverted the Liberties of his Crown, and that therefore he would Prohibit all People going to* **Rome**, *and from making Appeals thither, for that they should receive* **Justice** *and*

An *Interdict* is an Ecclesiastick *Censure*, Prohibiting the Administration of the Sacraments, the *Burial* of the Dead, and all or most Divine Offices. *Mat. Paris*, fol. 213. n. 30, 40.

* Pope *Innocent* 3d.

Two *Arch-Bishops* Elected.

Mat. Paris, fol. 222. n. 10, 40, 50.

The Pope Cassates both Elections, &c.

Ibidem, & fol. 223. l. 3.

Ibidem, n. 30, 40.

Ibidem, n. 50.

Ibidem, fol. 224. n. 20. 30.

The King threatens to prohibit Appeales to *Rome*

and **Judgment** *in all things at home.* The **Bishops**, by vertue of their **Obedience** to the **Apostolick See**, by their Letters gave notice, they would **receive** and **obey** **Langton** as their Pastor; but the King not receding from his purpose, the whole *Kingdom* was put under an **Interdict**, *March* 23. 1208. The **Bishops of London, Ely**, and **Worcester** executing it at the **Popes** Command, and then they and the **Bishops of Bath** and **Hereford** went privately out of *England.* The King incensed with these proceedings, **Banished** the **Bishops**, put their **Bishopricks, Abbys**, and **Priories** under the Custody of Lay-Men, Confiscated their Rents, and Goods, caused their Barnes and Granaries to be broken up, and their Corn to be sold. And also the **Focarie**, or **Domestick Concubines** of the **Clergy** to be seized, and taken into Custody, and by the Redemption of them raised a great Sum of Money: After this, the **Pope**, by the advice of his **Brethren** the **Cardinals**, commanded the **Bishops** of **London, Ely**, and **Worcester**, by Name to **Excommunicate** the **King**; which *Sentence*, though the *Bishops* dare not execute, yet it was published among the People, much to the prejudice of the *King*. In the year 1211, **Pandulph**, a great Familiar of the **Pope**, and *Durand* a *Templar*, were sent from him to make Peace *inter* **Regnum & Sacerdotium**, between the *King*, **Temporal Barons**, and the **Bishops**; &c. or between the **Laity** and **Clergy**. The King freely granted,

Ibidem, fol. 226. n. 10.

Ibidem, n. 30. Ibidem. n. 40. The Kingdom put under an *Interdict.* Ibidem, n. 50.

Ibidem, fol. 227. l. 1.

Ibidem, fol. 228. n. 30. The Pope Commands the Bishops of *London, Ely*, and *Worcester*, to Excommunicate the King by name.

Pandulph sent to make Peace.

Ibidem, fol. 230, n. 40. 50.

granted, that the *Arch-Bishop* and *Monks* of *Canterbury*, and all the proscribed *Bishops*, might return in quiet, and remain in their former Condition, but because the *King* would not make *satisfaction* to the *Arch-Bishop* and *Bishops*, for their damages sustained and their Goods confiscated; these *Nuntio's* or *Messengers* returned without effecting any thing, and upon their *Report* to him, the **Pope admiring his Contumacy, Absolved all his Subjects, high** and **low, rich** and **poor from their Obedience** and **Subjection. And upon pain of Excommunication, commanded them all to avoid him at his Table, in his Councils, and in ordinary Discourse.** Such of the Great Men as adhered to the *King*, *Bishops*, *Clergy*, *Temporal Barons*, &c. **had the Character of Evil Counsellors,** part of whom *Paris* enumerates, *viz.* 29 *Earls*, *Barons*, and *Great Men*, and three *Bishops*

Ibidem, fol. 231. n. 10.

Ibidem.

The Pope Absolves the Kings Subjects from Obedience.

Ibidem, n. 20.

The year following, *Anno* 1212, **Stephan Langton** *Arch-Bishop* of *Canterbury*, the *Bishops* of *London*, and *Ely*, *went to Rome*, and informed the **Pope** of the many *Rebellions* and *Enormities King John was guilty of*, from the time of the **Interdict** to that day, indefatigably lifting up the hand of Rage and Cruelty against the *Lord* and **Holy Church.** And then humbly beseech the **Lord the Pope** that he would take some care to relieve the **English Church** ready to perish; *and in a great fit of Sorrow for the Desolation of the Kingdom of England, by the advice*

Ibidem, fol. 252. n. 30.

Translated verbatim out of *Mat. Paris*, *Historiographer to Hen.* 3. Son to King *John*, and a Monk of *St. Albans*, and a Favourer of these practices of the Clergy. Ibidem, n. 40.

advice of the Cardinals, Biſhops, and other Wiſe men, **Sententially defined** *that* **John King** *of* England *ſhould be* **depoſed**, *and another more worthy appointed to ſucceed him, and to that purpoſe wrote to the moſt potent* **Philip** *King of* France *to execute this Sentence, and that if he would take the labour upon him to Dethrone the* **King** *of* **England**, *he ſhould have remiſſion of all his Sins, and he and his Succeſſors poſſeſs that Kingdom by perpetual Right.* And further the **Pope** *wrote to the great Men, Soldiers, and Warriers of many Nations*, that they would take upon them the **Cruſado** to that purpoſe, and follow the **King** of **France** as **General** *in this Expedition* in vindicating the Injury done to the Univerſal Church; With this Meſſage the Pope ſent **Pandulphus**, and the **Arch-Biſhops** and **Biſhops** aforeſaid into *France*, from whom *Pandulph had private inſtructions, that if the King would repent and make ſatisfaction to the Lord, and the Roman Church*, and all others concerned in that Buſineſs, and **ſubmit to a form of Peace drawn by the Pope**, then he might find favor from the Apoſtolick See. In the Month of *January* next year, the **Arch-Biſhop** of *Canterbury*, *Biſhops* of *London*, and *Ely*, came from **Rome**, *and held a Council with the King of* France, *the French Biſhops*, the *Laity*, and *Clergy*, and promulgated the **Sentence** againſt *King John*. The **King** of **France** having raiſed a great Army to invade *England*; of which *King John* having notice, raiſed alſo a great Army, and expected his Arrival upon the Coaſt of *Kent* near *Dover*.

The Pope depoſed King *John*.

And gave his Kingdom to the King of *France*.

Ibid. n. 50.

Ibid. fol. 233. n. 20. A. D. 1213.

A Council between the *Engliſh* Biſhops and King of *France*, &c.

Ibid. n. 30. 40. Ibid. fol. 234. n. 30. 40.

Pan-

Pandulph sent two Templars, to let the K[ing] know he desired to speak with him, by wh[om] the King desired he would come to him wi[th] speed. They meet at *Dover*, when *Pandu[lph]* tells him, what a *vast Navy* and *Army* t[he] *King* of *France* had at the Mouth of the Ri[ver] *Sein* ready to set sail, and take possessi[on] of his Kingdom, and doubted not but t[o] make short work of it, having, as he boaste[d] Charts, or Assutances from most of th[e] Great Men of *England* of their *Fidelity* a[nd] *Obedience* to him; Being terrified and co[n]founded with this News *King John* by th[e] perswasion of Pandulph *submitted to th[e] form of Peace as it was* drawn up by the Pope; in which he sware to stand to the Comman[ds] of the Pope, before his Legate or Nuntio, in all things, for which he had been Excommunicated; and to make full Restitution and Recompence for all things which had been taken away from the Clergy or Laity by reason of the Interdict or present Quarrel. But *this was not a sufficient Submission, he must become Homager to the* Pope; *and his Offence was so great against God and his Mother the Holy Church, that nothing but granting his Kingdom of* England *and* Ireland *to the* Pope, *and making them St.* Peter's *Patrimony, and becoming his* Vassal *could expiate it; And he must also declare, that he did all this freely and voluntarily by the advice of his Barons, and not compelled by* Fear, *or the* Force *of the* Interdict. This done, Pandulph returns into *France* with 8000 *l.* part of the Restitution Money, for damages which was to be

Pandulph affrights King John.

Ibid. fol. 235. n. 10. 20. He submits to a form of Peace drawn by the Pope.

Ibid. fol. 236. n. 40. 50 & 237. n. 10. 20. 30. There is the whole Grant and Form of King John's doing Homage to the Pope on the Eve of the Ascension. A. D 1213. King John is forced to become the Popes Vassal Ibid. f 236 n. 10. f 237. n. 40.

Paid

Said to the Arch-Bishop and other Bishops, which were there, (as they pretended in Exile.) *King John* now thought himself at ease, and cast about him how to be even with the *King* of *France*, and sets the *Earl* of *Flanders* to invade his Kingdom on the East part, while he passed over into *Poictou* with an Army, and entered *France* on the West part to recover what he had lost: to which purpose he assembles *a great Army at Portsmouth*; but when they came together, the Great Men and Barons *refused to follow him, unless he were absolved from the Sentence of Excommunication.* The King much moved at this denial, sent the Charts or Letters of Assurance of 24 Barons to the *proscribed Bishops*, that they might return into *England*, without the least fear, and receive recompence for all *damages*, according to the form of Peace. They landed at *Dover* the 16th of *July*, and the 20th of the same Month the *King* was *absolved*, Swearing Fealty and Obedience to the Pope, &c. After this Absolution he made haste to *Portsmouth*, that he might pass into *Poictou*, committing the Government of the Kingdom to *Geofry Fitz-Peter*, and the *Bishop* of *Winchester*, with direction that they should *Order all the Affairs of the Nation with the advice of the* Arch-Bishop *of* Canterbury. When the *King* came to *Portsmouth*, *his Great Men*, *Knights*, and such as held by *Military Tenure*, complained they had been there so long in expectation of their Voyage, that all their Money was spent; and unless he would furnish

Ibid. 238. n. 30.

Ibid. fol. 239. lin. 1. The Barons deny to follow the King unless he were Absolved, &c. A. D. 1213.

The King and 24 Barons send the Bishops a safe Conduct to return.

Ibid. lin. 6. n. 10. 20. The King is Absolved, and Swears Fealty and Obedience to the Pope.

Ib. n. 30.

nish them out of his Treasury, they could not go with him, so that nothing was further done in this Expedition. *King John* seeing this design frustrated, and himself deserted, *contrary to their Tenures* and *Duty*, he raised Forces to reduce them to Obedience; the **Archbishop** told him he violated his *Oath he took at his Absolution*, and that he could not make War against any one without the *Judgment* of his *Court*. And the King proceeding, he further told him, that unless he did quickly desist, he would **Anathematize** all those that should take Arms against any Man before the **Relaration** of the **Interdict**. By which means he caused the King to give over prosecuting the *Barons* by Force, and left not the *King* until he had obteined a competent day for them to *answer* in his *Court*. But probably before that day came, or else to protect them from the *Execution* of the *Justice* of the *Kings Court*, viz. On the 25th of *August* that year, he caused a great *Meeting* of *Bishops*, *Abbats*, *Priors*, *Deans*, and *Barons* at *London*, where they enter into a Confederacy against the King when they should have a fit opportunity, and grew so troublesome to him about their *pretended Liberties*, that he sent to the **Pope**, promising him **great Rewards** to excommunicate them. But about next *Michaelmas* following, **Nicholas Bishop of Tusculum**, the **Popes Legate** came into *England*, *ut dissentiones inter* **Regnum & Sacerdotium**, *authoritate Apostolicâ reformaret*, that he might compose the dissentions between the *Temporal Nobility*, and *the Clergy*, by the *Apostolic Authority*, and there

Ibid. n. 50.

Ibid. f. 240. l. 1.

A. D. 1213.
Ib. & fol. 240. n. 10.

Ibid. & f. 245. n. 20.

Lb. f. 246. n. 30.

Episcopi & Magnates Regni.
Ibid. n. 50.

was

was a Meeting of the *Bishops* and Great Men of the *Kingdom*, before the *King* and *Cardinals* at *London*, *& tractatum ibidem per tridium inter* **Regnum & Sacerdotium** *de damnis*, &c. And there was a Treaty between the Great Men and Bishops for three days, concerning the damages of the Bishops, *&c.* when the King offered 100000 Marks as a full satisfaction for them all; The *Legate* perswades the *Bishops* to accept this Offer; they suspect the *Legates favor* to the *King*, and had several other Meetings at **Reading** and **Walingford**, about the state of the damages, and on the 12*th* of *December*, the proscribed Bishops received 15000 Marks more. At this Meeting were the **King**, the **Legate**, the **Arch-Bishop**, **Bishops**, **cum Magnatibus ac omnibus viris Religiosis, ad Interdicti negotium contingentibus**; The *Barons* or *Great Men* and all the *Religious* who were any ways concerned in the business of the Interdict; and every one brought in Writing a Catalogue of their **Ablata** or **Damages**; but by the Legates favour to the King, they were put off, and received no Money except the *Bishops* aforesaid. Notwithstanding this submission of the King and his giving away his Crown to the **Pope**, the Interdict still remained. So that the next year the *King* renewing his former design against the King of *France*, in the Feast of the Purification of the *Blessed Virgin*, sent Messengers to *Rome* for the *Relaxation* of the **Interdict**; and at the same time he, and his **Queen**, took Ship at *Portsmouth* with a great

A Treaty *inter Regnum & Sacerdotium.*

Now 12 times as much.

Ibid. fol. 247. n. 20.

A.D. 1214. pat. 15. *Johan.* m. 7. n. 19. apud *Reading. Paris ut supra.*

A.D. 1214. *Regni Johannis Regis* 15. Ib. f. 248. n. 20.

great Army, and in a few days arrived Rochel. Upon the 6th and 8th of M following theſe **Letters** to the Bar &c. and to the **Cities** and **Boroughs** formentioned were ſent to them, to them *notice* of his *Succeſs*, and let them k the **Pope** had *conſented* to the **Releas** the **Interdict**.

The Matter of the Kings Letters to the Barons and Burghs. Ib. f. 249. n. 10.

That to the **Cities** and **Boroug** was to **borrow Money** towards the C of this *Affair*; and **that** to the **Barons** to ask their **advice** and **aid** in the effe of it. In the mean time the **Pope** ha heard *both Parties*, by their **Commiſsion** or **Proctors** at *Rome*, and being ſatisfied was much to the advantage of the Na and good of *Souls*, he *wrote* to the Bi of **Culculum** his **Legate**, to take off **Interdict**, upon condition the King ſhould to the *proſcribed Biſhops* 40000 Marks, diſco ing what he had paid to them before. W

Fourty thouſand Marks to be paid to the proſcribed Biſhops.

the **Legate** had received his *Authority* to *releaſe* the **Interdict** the *King* was beyond S and made the **Legate** and **William M** ſhall his *Commiſſioners* to act for him. *I* **Legatus** *in urbe Londinenſi apud San Paulum grande congregavit Concilium, ubi c gregatis* **Archiepiſcopis**, **Epiſcopis**, **T batibus**, **Prioribus**, **Comitibus**, **Ba nibus**, & **aliis ad hoc negotium Int dicti Spectantibus propoſuit**, &c. T

The Popes Legate by the Kings Authority calls a great Council.

Ibid. n. 30. 40.

is, the ſame *Legate* convened a great *Co* at *London* in St. *Pauls*, where were the *Ar Biſhops*, *Biſhops*, *Abbats*, *Priors*, *Earls*, *Barons*, *a others concerned in the Buſineſs of the Interdict*, *p*

The Conſtituent parts of that great Council.

propounded the *form* of *Reſtitution* the Pope had drawn up at *Rome*, and it being proved the *proſcribed Biſhops* had *Received* 27000 *Marks*, there reſted only 13000 more to be paid to them; for which the *Biſhop* of *Winchester* and *Normich* undertook to pay, and then the Legate on St. Peters day the 29 of *June releaſed* the *Sentence* of the Interdict after it had continued *Six years, three months, and fourteen days.* The Interdict releaſed. A. D. 1215. 16 *John.*

The Interdict thus releaſed, there came to the Legate an innumerable multitude of *Abbats, Priors, Templars, Hoſpitalers, Abbeſſes, Nuns, Clerks*, and Laics, requiring reſtitution for the *Damages* and *Injuries* they had received in the time of the Interdict; but the Legate *anſwered them all alike, that there was no mention of their Damages and Injuries in the* Popes *Letters, and that he neither ought, or could tranſgreſs the Bounds of his Authority*: and indeed moſt of theſe, the *Religious* eſpecially, could require nothing, for the *King* had procured from moſt *Religious houſes*, Teſtimonials, that what he had from them, was freely given him. But when by the *Authority* of the Pope they thought they might have a compenſation for them, then they called *theſe things* which they had *given* to the *King* Ablata, things taken from them; for at this time the Pope had by *Mandate* ordered Commiſſioners from him to *Tax* a *Sum* upon the *King* to be paid by 1200 *Marks* a year in recompence of the Ablata or *Goods taken* from the *Clergy*, &c. And the *King bound himſelf by Oath, and had alſo* ſix undertakers *with* *him*, Ibid. n. 50. Ibid. fol. 233. n. 30. *Rex requirit Religioſos ut confirment quæ ei dederint tempore Interdicti: quæ nunc ablata vocantur.* Pat. 16. *John.* par. 1 m. 10. Dorſ. and the acquittance for them is upon Record. Ibid. m. 8. Dorſ. n. 1. Ibid. m. 17. Dorſ. n. 1. 17 Junii Chart. 16 *John.* m. 9. n. 67. in Andevagia.

him, W. E. Ferrers, the *Earls* of *Chester, Winchester*, and *Arundel, William Bruer*, and *William Marshal*, for the performance of it.

A Council called for Raising Money to clear the Interdict.

This being the *History* of the **Interdict** by Reason whereof the *King* and *Kingdom* were reduced to great streights, the intention of calling this *Council* was for the raising of Money to satisfie the *Bishops* and *Clergy* for their pretended damages, and likewise for a gratuity to the **Pope** (of whom *Mat. Paris* says, *he was ambitious above all men, prone and insatiably thirsty after Money, and prone to all wickedness, for Rewards either given or promised*) and **Pandulph** his **Legate**, that the **Interdict** might be taken off; which in those days were not small Sums, as may be concluded by 40000 Marks given to five Bishops only; and it shall be granted that the **first Record**, by which *King John* required *Advice* and *Aid* of the *Barons*, Knights and all the **Feudataries** of all *England* towards the releasing of it, was a Summons to a great *Council*, yet it will not by this *Record* be made out, that the **Commons** were *Represented* in it, or *made* an *essential part* of it. For the **Milites & omnes fideles totius Anglie**, to whom this Writ was directed, next after the **Barons**, were only the *Tenents in Capite*, which were no real *Barons*, yet were often called to *Great Councils*, as **Barons Peers**. And such that were not actually *Barons*, there are many *Instances*, of there being called to sit amongst the

Fol. 245. n. 10.

Barons Peers.

the *Lords* ſometimes, and ſometimes again omitted in ſeveral *Kings* Reigns after the **Commons** were a **third Eſtate**, and *Repreſented* as at this day. And that the **Milites & Fideles** mentioned in this Writ were onely **Tenents in Capite**, 'tis very clear from the cloſe of the *Writ* it ſelf, where 'tis ſaid, **Unicuique veſtrum ſi fieri poteſt Literas noſtras tranſmiſiſſemus, ſed ut negotium expeditetur majori feſtinatione**, &c.

Milites & Fideles were *Tenents in Capite* in this Record.

We had ſent our *Letters to every one of you, if it might have been done, for the Buſineſs it ſelf, which requires a quick diſpatch*, &c. It cannot be thought that the *King* ever wrote to all the *Knights* and *Feudataries* of *England* to meet in a *Great Council*, or if **Fideles** be taken in the largeſt and moſt comprehenſive ſenſe that may be, for *Subjects* in *General*, no man can believe that ever any *King* did write **particular Letters** to every *individual Subject*, or *Free-holder* to come to, and ſend their *Repreſentatives* to *Great Councils*. And therefore whatſoever the words of the *Writ* are, the deſign of it was to *convene*, **ſuch** only as had *uſually* in thoſe times been called to *Great Councils*, which were the **Tenents in Capite** though no *Barons*, who only Repreſented themſelves, and not the Commons, and were all ſummoned by particular Writs, and not ſent or choſen by the People, and this *Appears* to be ſo by the irrefragable authority of *King John*'s **Magna Charta**, confirmed at **Runnemede** not full two years after, which was to be a **Law** for the *ſummoning* of *Great*

It was the antient Cuſtom, for our Kings to ſend Letters to all *Tenents in Capite*, to Summon them to Parliament.

Paris fol. 257 n. 20. 30.

The Law of Summons to great Councils or Parliaments.

Barones Capitales minores, sunt qui a Rege Tenent in Capite. Spel. Gloſſar. fol. 69. col. 2.

Councils, or if our *Author* pleaſe, *Parliaments*, in the ſubſequent times. The words are **Submoneri facietmus Archiepiſcopos, Epiſcopos, Abbates, Comites, & Majores Barones Regni ſingillatim per Literas noſtras, & preterea facietmus ſubmoneri in generali per Vicecomites & Balivos noſtros, omnes alios qui de nobis tenent in Capite ad certum diem, ſcilicet ad terminum quadraginta dierum ad minus & ad certum locum in omnibus literis ſubmonitionis iſtius, cauſam ſubmonitionis iſtius exponemus; & ſic facta ſubmonitione negotium procedat ad diem aſsignatum, ſecundum conſilium eorum qui preſentes fuerint, quamvis non eos ſubmoniti venerint.** We will cauſe to be ſummoned, the *Arch-Biſhops*, *Biſhops*, *Abbats*, *Earls*, and the great *Barons* of the *Kingdom ſeverally by our Letters*, and moreover we will cauſe to be *ſummoned in general*, by our *Sheriffs* and *Bayliffs*, all others which **hold** of us **in Capite** at a certain day, to wit, at the term of 40 days at leaſt, and at a certain place. In all our Letters of Summons we ſhall declare the cauſe of the Summons, and ſo they being ſummoned, the Buſineſs ſhall proceed at the day aſſigned, according to the advice of ſuch as are preſent, although all that were ſummoned ſhall not come.

By this *Law* the way and manner of **Summons** to great *Councils* was *ſetled*, and made more eaſie than it was formerly; for by

by the former *Writ* the 15th *Johannis*, it appears to have been the custom for the *King* to write to every one of the *Milites & Fideles*, or **Tenents in Capite**, which were no formal **Barons**, *particularly* as he did to the *Barons*, and that the *Custom* was so, 'tis likewise *implyed* in this **establishment** of **Summons** for the future, that it should be by particular *Writs* to every great *Baron*; and in **General** to all **Tenents in Capite**, by *Writs* directed to the *Kings Sheriffs* and *Bailiffs*. Hence 'tis evident, that only the **Arch-Bishops, Bishops, Earls, Barons**, and **Tenents in Capite**, were *usually* **summoned** to *Great Councils*. For if there had been any **others** to have been **summoned**, the like care would have been taken to **settle** the way of **Summons** to them as there was of these. And it is as evident from hence who were **constituent parts** of **Great Councils** and **Parliaments** in these and the following times until the 49th of *Henry* the *Third*.

The constituent parts of great Councils.

And we have the *practice* and *use* of this *Law* confirmed by a very clear *Record*, twenty years after, in the Reign of *Henry* the *Third*. *Rex Vicecom' Sussex Salutem. Scias quod* **Archiepiscopi, Episcopi, Abbates, Priores, Comites Barones, & omnes alii, de regno nostro Anglie qui de nobis tenent in capite**, *spontanea voluntate sua, & sine consuetudine, concesserunt nobis efficax auxilium, ad magna negotia nostra expedienda. Unde provisum est de consilio eorum quod habeant de* **singulis feodis Militum** *& Ward. Qui de nobis*

Cl. 19 *Hen.* 3. m. 8. Dorf. The Antient Members of Parliament.

An Aid given.

Two Marks of every Knights Fee,

nobis tenent in capite, **duas Marcas** *ad prædictum auxilium, nobis faciendum, & unde providerint, reddere nobis unam medietatem ad festum Sancti Michaelis An. Regni nostri* 19. *& aliam medietatem ad Pascha Anno Regni nostri* 20. *Ideo tibi præcipimus, quod ad Mandatum venerabilis Patris R. Ciceſtrienſis Epiſcopi Cancellarii noſtri, ſine dilatatione diſtringas omnes Milites & Libere Tenentes qui de eo tenent, per Servitium militare, in Balivâ tuâ ad reddendum ei de ſingulis feodis & Wardis duas Marcas ad prædictum auxilium nobis per manum ſuam reddendum in terminis prædictis.*

Sic Scribitur pro aliis Epiſcopis, Abbatibus, Prioribus, & Magnatibus.

The King to the Sheriff of *Suſſex*, Greeting. Know ye that the *Arch-Biſhops, Biſhops, Abbats, Priors, Earls, Barons*, and **all others of our Kingdom which hold of us in capite**, have granted us an effectual Aid on their meer good Will, and without Cuſtom, of every **Knights Fee two Marks**, &c. Therefore We Command thee that according to the Command of *R. Biſhop* of *Chicheſter*, our Chancellor, to diſtrein all Knights and Free-Tenents which do hold of him by Military Service in thy County or Baylywick to pay him for every Knights Fee, *&c.* two Marks to be paid by him to us.

To quicken their Tenents,

After the ſame manner it was written for other *Biſhops, Abbats, Priors*, and *Great Men.*

His

His Third Argument *Considered.*

IT is drawn from 40 *Ed.* 3. *n.* 7. 8. *King John* in the 14th of his Reign, had made himſelf and Crown tributary to the **Pope**, by *Homage* and the Payment of 1000 Marks by the year. The **Pope** in the 40th of *Edward* III. demands *Homage* of him, and a 1000 Marks *per Annum* for the *Kingdoms* of *England* and *Ireland*, and in caſe of non-performance, he threatens to make out Proceſs againſt the *King* and *Kingdom*; whereupon the *King* asks advice of his *Parliament*, and the *Biſhops* by themſelves, and the *Dukes*, *Earls*, *Barons*, and *Great Men* by themſelves anſwered, and ſaid, that the ſaid *King John*, nor no other could put himſelf, nor his *Realm*, nor his people in ſuch ſubjection, **without the aſſent and accord of them.** And the Commons being demanded about the ſame thing, **Reponderent en meſme la manere**, *anſwered in the ſame manner*, and in Number 8. **Les Prelates, Ducs, Countes, Barons, & Comuns en ſur ce plein deliberation Reſponderent & deſoient D'une accord que le dit Roy Johan ne nul autre purra mettre luy ne ſon Royalm ne ſon people en tiel ſubjection ſaunz aſſent de eur.** *The Prelates, Dukes, Earls, Barons, and Commons in full deliberation upon*

Parliament Roll. The Pope demands Homage of King *John*. Rot. Parl. 40 *Ed.* 3. n. 7. And 1000 Marks *per an.*

Ibid. n. 8.

this matter, answered, and said, with one accord, that the said King John, *nor no other, could put himself nor his Realm, nor his People in such subjection, without their Assent.* All that the **Resolution** of this **Parliament** in this Case proves, is that *King John* could not subject Himself, his *Realm* or *People*, without their Assent, but proves not, who they were that in such Cases at that time gave or denied their Assent, or how they did it, or whether 153 years before this Resolution, the Commons were represented by Knights, Citizens, and Burgesses, as at this day.

It was 153 years from the 14th of King *John* to the 40th of *Edward* III. Ibid. n. 7.

The **Prelates** and **Barons** gave their answer first, that such a subjection could not be made without their *Assent*, and then the **Commons** were asked what their thoughts were, and they answered in the same manner, and in the same words the **Barons** had done, And when they answer all together, they do it in the **same form of speech conceived first by the Barons** *without any consideration*, whether the **Commons** were the same Body of Men, at the time of executing the Chart of *King John's* subjection, or as at that present.

The Fourth Argument *Consider'd.*

FRom several *Records*, viz. 28. 32. 37. 42 and 48 *Hen* 3. wherein the word **Parliament** is to be found, as likewise the words **Communitas** *populi*, and *Communitas Regni* are mentioned. As to the word **Parliament** I answer, as before, that it came in use here instead of **Magnum Concilium**, or **Commune Concilium** & **Colloquium**, about the middle of the Reign of *Henry* III. and in time became of more frequent use than those words, and signifies no more than **Colloquium** a *Conference*; and doth no more point out the constituent Members of it, than that word did; And so the meaning of the **Parliamentum** is to be taken in the first *Record*, which is a *Writ* to the Sheriff of *Northampton-Shire*, that he should not permit any one in his **Baliwicke** to use any *Liberties* belonging to the *Crown*, unless they had first been used unto the time of the *Parliament* of **Runnemede**, *quod fuit inter Dominum Johannem Regem, Patrem nostrum & Barones suos Angliæ*, which was between the Lord *King John* and his *Barons* of *England*. What doth **Parliament** signifie here but **Colloquium** a Conference between the *King*, and his *Barons*, not a word of the **Commons**

P. 33.

Cl. 28 *Hen.* 3. m. 12. *Dors.*

Angli autem dum Parliamentum pacificum habuissent cum Walensibus, &c. Par. fol. 978. n 10.

A short Narrative of the Meeting at *Runnemede*.

mons in the *Record*, nor can the word **Parliament** imply them, and a short touch upon the History of this Meeting, or Conference at **Runnemede**, puts it out of Question, that the **Commons** were not there represented as at this day, in our **Parliaments**. The *Barons* having on the 24th of *May*, by the **invitation and contrivance** of the **rich Citizens**, possessed themselves of **London**, after they had placed their *own Guards* upon every Gate, and taken *security* of the *Citizens*, disposed of all things in the *City* as they pleased, they sent their *Letters* to the *Earls*, *Barons*, and *Knights* that really or seemingly adhered to the *King*, *exhorting them with threats that if they would not desert the Perjured King* (as they called him) *and faithfully close with them*, in *asserting their Liberties*, *they would proceed against them as publick Enemies*, *beat down their Castles*, *burn their Houses*, *and destroy their Warrens*, *Parks and Hart-yards*. Upon this Command of the *Barons*, the greatest part of the *Noblemen*, and such as were with the *King*, left him, and went to *London*, and *confederated* with the *Barons*. The *King* seeing himself deserted, and fearing they would seize his Castles, sent *William Earl* of *Pembroke*, and other faithful Messengers to them, to let them know he would grant them the *Laws* and *Liberties* they desired; and commanded them to appoint a day and place for a meeting to prosecute this Affair. The **Barons** (*immenso gaudio recreati statuerunt Regi diem ut venirent contra eos ad* **Colloquium** *in pratum inter*

Par. fol. 254. n. 40. 50. The Barons invited by the *Londoners* to take possession of the City.

Ibid. fol. 125. n. 10. 20. They Command all the Barons of *England* to come in to them.

Sup. hoc Baronum Mandatum. Ibid. Most of them leave the King.

Ibid. n. 30.

inter **Stanes & Windleshores** *situm* 15 *die Junii*) being transported with great Joy appointed the King a day to meet them at a Conference in a *Meadow* between *Stanes* and *Windsor*, upon the 15th of *June*, and accordingly they met at the day and place prefixt. This was the **Parliament** at **Runnemede** whither the *Barons* marched with their Army, and the *King* perceiving his Forces to be inferiour to the Forces of the *Barons*, granted the *Laws* and *Liberties* as they there follow in *King Johns* **Magna Charta**. I think no body will say, that the **Commons** were represented in this Meeting, as at this day in **Parliament**: Nor indeed was it possible for any *Representatives* of the **Commons** to be there, for there was but One and twenty days, between the 24th of *May*, *when* the *Barons* possessed themselves of the City of *London*, and the time of this *Conference*; In which One and twenty dayes the *Barons* first *secured* the *City*, then sent their *Commands* to other *Barons* through *England* to come in, *&c.* who, after they received them, repaired to them at *London*, and then, when the *King* see himself deserted, he sent *Messengers* to them, and they appointed the 15th of *June* for the day of meeting, **all these Transactions** passed one after another in this **short space** of time, so that it could no ways be that **Writs** should issue, and the People **Elect** their **Representatives**, in so small time as must needs **intervene** the

P. 33. Ibid. n. 50.

Kings

Kings Message to them, to appoint a time and place, And the time appointed

Cl. 32 *Hen.* 3. m. 13. Dors.

Next he tells us of the *Outlawry* against *William de Hastingeot*, which was reversed, because it was not done according to the *Law* and *Custom* of the *Kingdom* (these words he hath left out) **coram Rege & toto Parliamento**, before the King and the whole Parliament. I believe he had better have let alone harping upon the word *Parliament* in this *Record*, for 'tis a clear and unanswerable Argument against him, that the **Barons** in this Meeting were the **whole Parliament**: for he can never prove the **Commons** medled in such **Judgments** or **Matters of Law**, or that it did belong to them, or ever pretended to it in our **Antient Parliaments**.

The Teste of this Writ is 16 *Feb. apud Westm.* p. 34.

The Barons the whole Parliament.

And that the *Barons* were then the *Parliament* there is another Record in the same year, of which this Gentleman hath given a scrap in his Margin, where the word **Parliament** is mentioned, and the persons whereof it consisted, who were **Barons** only. The **Pope** had granted a large *Boon* to the *Church* of *Canterbury*, of one years profit of all the *Livings* in the *Patronage* of *Laymen* when they should become void; The King Writes to the *Bishop* of *Norwich*, that he should not permit them to be levied, or force the *Incumbents* to pay them, in this form. *Rex W. Norwicens. Episcopo salutem, quia* **Magnates** *Terræ Nostræ noluerint in ultimo* **Parliamento** *nostro quod fuit apud London,*

Ibidem, m 12. Dors.

London, &c. *vobis mandamus prohibentes districtè ne fructus exigatis prædictas, vel Ecclesiarum Rectores ad conferendum dictum subsidium compelletis, donec cum prædictis magnatibus, sine quibus, super hoc nihil volumus attemptare,* **Colloquium** *habuerimus teratum. Teste Rege apud Sanctum Edmundum, 9 Mart.* The King to *William* Bishop of *Norwich* Greeting, Because the Great Men of our Land would not in our last **Parliament** at *London*, &c. Therefore We command, and streightly forbid, that you do not exact the said Profits, nor compel the *Rectors* of Churches to pay them, until We have had another **Conference** or **Parliament** with the *Great Men* aforesaid, without whom we will attempt nothing in this matter.

Not a word of the Commons.

In this Record we find the old word **Colloquium**, and the new word **Parliamentum** expressive of one another, and of the same thing, and that the word **Parliament** did no more imply the **Commons** to be a constituent part of it, then **Colloquium** did. It is further to be noted concerning this Writ to the Bishop of *Norwich*, that the Teste of it is but two and twenty dayes after the other, to the Sheriff of *Northamptonshire*, about *Hastingcots* Outlary, from whence 'tis evident, 'twas the same **Parliament**, or **Colloquium** *mentioned* in both.

Colloquium & Parliamentum the same.

The next *Record* he useth to inforce this Argument is *Pat.* 37 *Hen.* 3. *m.* 13. which may be called an *Exemplification*, *Promulgation*, or *Declaration* of the *Excommunication*, or

Pat. 37 *Hen.* 3. *m.* 13. The Date of this Record is the 13 *May*, 37 *Hen.* 3. *apud Westm.*

or *Sentence* pronounced againſt the infringers of Magna Charta, on the third of *May* in Weſtminſter-Hall, 37 *Hen.* 3. 1253. under the *Seals* of the *King* and other *Great Men.* All our Author cites in this Argument is part of the latter end, and that in two ſmall parcels, *Rex Magnates & Communitas Populi proteſtantur Publicè* (againſt infringers of *Magna Charta*) *Contra conſuetudines Regni antiquas & uſitatas; in cujus rei teſtimonium* and then tells who ſet their Seals to it. The whole latter part of it, which he hath mangled and divided, runs thus, *Dominus Rex & prædicti* Magnates *omnes &* Communitas Populi proteſtantur *publicè, in præſentia venerabilium Patrum B. Dei Gratia Cant. Archiepiſcopi totius Angliæ Primat. nec non & Epiſcoporum omnium in eodem* Colloquio *exiſtentium*, concerning any thing to be added or altered in Magna-Charta, *quod in eâ nunquam conſenſerunt nec conſentiunt ſed de plano eis contradicunt. Præterea præfatus* Dominus Rex *in prolatione præfatæ ſententiæ omnes Libertates & conſuetudines regni noſtri antiquas & uſitatas &* dignitates & jura coronæ ſuæ *ore proprio ſpecialiter ſibi & Regno ſuo ſalvavit & excepit. In cujus rei memoriam*, &c.

The whole Record is printed in his Apendix, p. 164.

Colloquium for *Parliamentum.*

King *Henry* in the Confirmation of *Magna Charta*, ſpecially ſaveth and excepteth the Rights of the Crown.

To underſtand who were the Community of the People meant in this *Record*, we muſt have *recourſe* again to *Mat. Paris*, who in this very year writes, that *In Quindenâ Paſchæ Menſe Aprili*, tota *edicto Regio convocata* Anglie Nobilitas *Convenit Londini de arduis Regni negotiis ſimul cum Rege tractaturi*

Communitas Populi, 37 *H.* 3. Who?

Fol. 865. n. 40.

tura, extiterunt igitur ibidem cum Comitibus & Baronibus Quamplurimis, Archiepiſcopus Cantuarienſis Bonifacius, Epiſcopi Angliæ fere omnes (only the Arch-Biſhop of *York*, and the Biſhop of *Cheſter* were abſent by reaſon of ſickneſs.) The *King* acquaints them with his purpoſe to go and aſſiſt the *Chriſtians* in the *Holy Land*, and requires a great Sum of Money, they fall into Conteſts about granting it, and the **Biſhops** told the *King* the **Liberties** of the Church were *violated*, and if he would reform thoſe *Errors*, according to the *Tenor* of the **Great Charter** of **Liberties**, they would ſtrain hard to ſerve him, which he promiſed them to do. Then after many Diſputes in Fifteen dayes time, *Conceſſa eſt Regi decima pars proventuum ab Eccleſiâ per triennium, & a* **Militibus Scutagium** *illo anno, ſcilicet ad ſcutum tres Marcæ.*

Ibidem, n. 50.

Ibidem; fol. 866. lin. 1.

Ibidem, n. 20.

The Church granted the Tenth of their Revenue for three years, and the *Knights* or *Nobility* granted for that year *Scutage*, to wit three Marks of every *Scutum* or *Knights Fee*. And then the *Arch-Biſhop* and *Biſhops*, in their *Pontificalibus*, and *Light Candles in their hands*, in the preſence, and with the *Aſſent* of the *King*, *Richard Earl* of *Cornwal* his Brother, and ſeveral Earls there named, *& aliorum* **Optimatum** *Regni Angliæ*, and other *Chief Men* of the *Kingdom* of *England*, on the third of *May* Excommunicated and Curſed all thoſe that from thenceforward ſhould deprive the *Church* of her *Right*, and all thoſe that ſhould *change*, *alter*, or *diminiſh*

Notwithſtanding this he ſummoned, *Milites ſibi ſervitium Militare debentes*, that they ſhould be ready with Horſe and Arms at *Portſmouth*, eight dayes after *Trinity*, to paſs beyond Sea. *Paris, fol.* 868 *n.* 10. Ibidem, n. 30, 40, 50. No Commons. See the Form of Excommunication, n. 40, 50.

nish the **Liberties** of the *Church*, and ancient *Customes* of the *Kingdom*, especially those granted in the Charter of the *Common Liberties* of *England*, and *Charter* of the *Forest* by the *King* of *England*. **Archiepiscopis, Episcopis, & reteris Anglie Prelatis, Comitibus Baronibus Militibus & Libere Tenentibus**, &c. To the *Archbishops, Bishops, and other Prelates of England, to the Earls, Barons, Knights, and Free Tenants* or **Tenants** in **Militarie**, or **Knights-Service**, for they only were such as paid *Scutage*, which was at this time a kind of Composition with the King, for the confirming **Magna Charta**, and was never charged but upon **Knights Fees**, and these were such as held perhaps one narrow or scant *Knights Fee* only, or *some part* of a *Knights Fee*, as an half, 3d, 4th, 6th, 8th part, &c. who all paid a *proportionable* share of *Scutage* to the *Great Lords*, or *Tenents in Capite*, for the Lands they held of them in **Military Service**, which was paid first to the *Great Lords*, and by them paid to the *King*.

The Constitutent parts of the *Colloquium*, 37 *H.* 3. when *Magna Charta* was Confirmed.

I shall observe from this Relation given by *Mat. Paris* of the **Colloquium**, or Conference *mentioned* in this *Record*, that it was **all the Nobility** of **England** met at *London*, to Treat with the *King*, and were *summoned* by his *Edict* or *Writ*; that particularly there were all the *Bishops* of *England*, with very many *Earls* and *Barons* at this Meeting; and lastly, that all the *Temporal Nobility*, or the **tota Anglie Nobilitas** in the *Great* of *Scutage* are called **Milites Knights**, Military

Observations from the preceding Record.

The Great Barons sometimes have been Summoned to Parliaments, with the Addition of Chavalier.

Military Knights. And from thence I collect, that besides the **Barones Majores**, that came to this Great *Council*, or *Parliament*, there were also the **Tenents in Capite**, according to the *direction* and *Law* for **Summons** in *King Johns* **Charter**, who were comprehended in the words **tota Nobilitas & Milites**; And that other *Tenents* that held of the **Tenents** in **Capite** by **Knights Service**, *were bound by their Acts.* For they all knew how many **Knights Fees** they held of the *King* in **Capite**, and if they had given away any to others, they *held* of them as they did of the *Crown*, and answered a *proportionable Rate* toward this *Taxe*, for the *Fees*, quantities, or parts of *Fees* they held of them, about which there could be no mistake, after the **Scutage** was ascertain'd. In so *great* an *Assembly* where all the *Nobility* of *England* were called together by the *Kings Writ*, and upon so great an *Occasion* and *Solemnity* as confirming the **Great Charter** of **Liberties**, after such an *extraordinary manner*, it cannot be doubted, but besides the *Barons*, **all the Tenents in Capite**, both *great* and *small*, which were then very *Numerous*, were present; or at least most of them, from whence it is not difficult to tell our Author, who the **Communitas** were, after the **Prelates**, **Barons**, and **Magnates**; they were no other then the **small Tenents in Capite**: But, in this Record, the **Communitas** may be all the **Tenents** in **Capite**, both great and small, notwithstanding the word **Magnates**

Milites & equivalent proper and usual for Barons. *Seld. Tit. hon. fol.* 574, 575.

The *Communitas populi* were Tenents in Capite, both great and small.

nates thrice used in it to the same sence. As first, in the begining of it. *Noverint Universi quod Dominus Hen. Rex. Angl. Illustris, R. Comes Norff. H. Com. Hereford & Essex. J. Com. de War. Petrus de Subaudia Cæterique* **Magnates** *Angliæ* (or as 'tis in *Mat. Paris*) **Alii Optimates Regni Angl.** *consenserunt, in sententiam* **Excommunicationis** *generaliter latam apud* **Westmonasterium**, &c. In this place **Magnates** following the Earls only, and compared with **Optimates** in *Mat. Paris*, may very well be referred to the **Earls** and **Great Barons** *only*, and leave all the other **Tenents in Capite**, to be **Communitas Populi**, who were all *summoned* by one General Writ, not *chosen*, and *sent* by the *People*, but *summoned* as the *great Barons*, though in *general*, as hath been before shewn, from King *Johns* **Magna Charta**. Secondly, *Dominus Rex & prædicti* **Magnates** *omnes, &* **Communitas** *Populi*, &c. that is the Lord the King, and all the foresaid *Great Men* and *Community* of the *People* (to wit) the *Community* of the *Laity*, or the *Laity* in *general*, do protest publickly in the presence of the *venerable Fathers, B.* **Arch-Bishop** of *Canterbury*, and all the *Bishops* there present, *&c.* For here the *King*, *Great Men*, and **Community** of the *People*, or *Laity*, made their Protestation before the Bishops and Clergy, and as I have proved before, the Clergy and Laity are often expressed and distinguished by **Clerus** and **Populus**. So that **Communitas populi**

Bo'. 866.n.30.

Or the Community of the Laity.

In that Book which is called the Antient *Modus Tenendi Parl.* the Title of the third Chapter, which is concerning Summons, is *de Clero*, or *Clericis*; and the Title of the Fourth Chapter, concerning the same matter, is *de Laicis*, which treats of the Barons Summons.

populi doth not here signifie, the **Community** of the **Commons**, but the **Community** or *body* of **Laic's** there present. And in this sense **Clerus** and **Populus** are used in the 8th of this King, *Anno Dom.* 1224. *Convenerunt ad* **Colloquium** *in Octavis Sanctæ Trinitatis apud* **Northampton**, *Rex cum Archiepiscopis, Episcopis, Comitibus, Baronibus, & aliis multis, de Regni negotiis tractaturi*; Sitting this *Parliament*, a Complaint was made to the King, that one of his *Justices* in the Circuit was carried Prisoner to *Bedford-Castle*; At which the *King* being very angry, *Quæsivit Concilium à* **Clero** *simul &* **Populo**: What can here be meant by **Clerus** and **Populus**, but the *Clergy* and *Laity*. In the third place it is used in the close of this *Record*, where it is said, that *in veritatis testimonium tam Dominus Rex, quam prædicti Comites, ad instantiam aliorum magnatum &* **Populi** *præsenti scripto sigilla sua apposuerunt.*

Communitas Populi, What.

Paris, Pol.

The meaning, and further explication of *Clerus & Populus.*

For the testimony of the truth of this Transaction, as well the Lord the King, as the foresaid *Earls*, at the instance and request of others the *Great Men*, and of the *People*, or *Laity*, put their Seals to the present Writing. There are only the words **Comites** and **Magnates** used in this *Record*, and why *Magnates* should be so comprehensive as 'tis there used, to include all *Earls*, *Barons*, and *great Tenents in Capite* in this very *Colloquium*, I see no great reason for it, but do think, without straining of the words, or putting a harsh sense upon them,

the **Communitas populi** may be here understood of the **body** of the *Tenents in capite*, that were no *Barons*, as contra-distinguished to the *Earls* and *great Men* of the highest *Order*, and besides that, they were all called by one General, and Common Writ: These words were used to denote the **great appearance** of them which were the *inferior sort* of the *Laity*, at this great Solemnity for asserting the *Common Liberties*, which they claimed; for the far greatest part of **Magna Charta**, concerned *Tenents in Military Service* only, and the **Liberties**, which our Antient Historians tell us were so mightily contended for, if seriously considered, were mainly the **Liberties** of *Holy Church*, by which, in most things, she pretended to be free from *Subjection* to a *Temporal Prince*, and the relaxation of the *Original Rigor* upon which *Knights*, or *Military Fees* were first given by the *Lords*, and accepted by the *Tenents*. I know that *Magnates* very often imports, and is used for the great *Tenents in Capite*, that were no *Barons*, and perhaps the least *Tenents in Capite*; likewise for Knights also and Bannerets, which though distinguished from the *great Barons* (who were ever created by some Ceremony or other, as all Orders of Nobility have been) yet had great Estates, and were possessed of, and held many *Knights Fees in Capite*, or were *Feudal Officers*, and therefore were summoned as Peers to the *great Barons*: And these, after the Commons were represented as at this day, in the times of *Edw.* 3. and *Rich.* 2.

The greatest part of the Liberties claimed in *Magna Charta*, concerned Military Men.

Or the Church

See concerning the Creations of Earls, Barons, concerning Magnates, Bannerets, Knights, Peers, &c. *Elsyngs modus tenendi Parliamentum*, from p. 27. to 46.

Rich. 2. are in Parliament Rolls called Autres Grantz, or Grandes, Autres Nobles; which were Barons-Peers, called by the *Kings Writ* into the *Lords House* at pleasure, and omitted at pleasure.

Autres Grands Barons, Peers.

The next Record he produceth is stiled, a Form of Peace, between the *King* and *Barons*, which was drawn up by Simon Montfort, Earl of *Leicester*, General of the *Army* of the *Barons*, and his *Complices*, when Henry the Third was their Prisoner, and Edward the First his Son, then Prince, was a *Hostage*, and *Prisoner* likewise, on behalf of his Father, in order to an *Agreement* and *Peace* to be made between his *Father* and *Barons*. The *Battle* of Lewes, where *King Henry* was taken prisoner, was Fought *May* 19th. This year 1264. And this *Record* is dated at *London* in June following after Midsummer-day, and the sum of it is, *That* Montfort *and his Faction should name three Men, who should have Authority and* power *from the* King *to choose and nome* nine Counsellors, *of which three should always be with the King, and he by their* advice *should* Order *and* dispose *of the Government of his* Castles *and* Forts, *and all other* business *of the Kingdom, and also by their* advice *should choose his Judges*, Chancellor, Treasurer, *and other* Officers *great and small, either of the* Court, or Kingdom;

A Form of Peace between the King and Barons, after the Battle of *Lewes*.

Knighton col. 2450. *n.* 60.

The unreasonable Impositions of *Montfort* and his Faction upon the King.

and when any of these were to be removed, or others chosen, it was to be done by the Advice of the first three **Electors**. *And these three were always to be supplyed by the Barons during King* Henry's *Reign, and such time of his Son* **Edwards** *Reign, when he should come to be King, as was then to be agreed on.* And this **Agreement** or Form of Peace (as they called their own **Impositions** upon *King Henry*:) was to remain good, until certain *short Articles* made at **Lewes** were drawn up into Form, and ratified.

A Brief Narrative of some Accidents before, in, and after that Battle, will make this Record be better understood. The year before the differences between the *King* and *Barons* about the *Provisions* made at *Oxford*, were by mutual consent, referred to the King of *France*, who gave Sentence for the King against the Barons, to which *Simon Montfort* and others would not submit; Whereupon many of the *Great Men* left *Montfort*; who was in those days a *Godly Man*, *a mighty seeming Saint, and wonderful Favourite of the Clergy and Religious:* from this time until after the Battle of *Lewes*, his strength rather decreased than increased: **Prince Edward** in this *Battle* ingaged the *Londoners*, and beating them, made too great a pursuit, so that before his return, the other part of the Kings Army

Mat. Paris, fol. 992. n. 10.

Ibidem n. 20. Ibidem, 995. n. 10. fol. 998. n. 30.

Fol 994. n. 10. Prince Edward. lost the Battle of Lewes by pursuing the Londoners too far.

Army was routed, and his Father taken prisoner, and put into the *Priory* of *Lewes*; the Castle making a stout defence against the *Barons*, at which the Prince took courage, rallyed his Forces, and designed to try the fortune of another Battle, which *Montfort* and his Confederates perceiving, they sent *Mediators* for *Peace*, promising, that on the next day they would effectually Treat of Peace, which was done, by the Mediation and Intercourse of the *Friers-Preachers*, and *Minors*, between both Parties, and things came to this issue, that on the morrow **Prince Edward**, and his **Cousin Henry** yielded themselves to *Simon Montfort*, and became **Hostages** for their Fathers, *Kings* of *England* and *Almain*, upon hopes of Peace, and a deliberate Treaty about such things as might be found expedient for the quiet and safety of the Nation. But when **Montfort** had **King Henry**, his **Brother Richard King** of the *Romans*, their Sons *Edward* and *Henry*, and many others of the *Nobility Prisoners*, and carrying the *King* and *Prince* about with him, until he had taken in all the *strong Castles* and *Forts* of the *Land*, he grew more averse, and difficult to treat of the Form of *Peace*, as it had been agreed at *Lewes*, making *King Richard* Prisoner in the *Tower*, and sending *Prince Edward* and his *Cosin Henry* to *Dover Castle*, keeping *King Henry* with him wherever he went.

Ibidem, fol. 996. n. 10.

Ibidem. This is the Mise, or short form of Peace, mentioned in the Preamble of this Record

Ibid. n. 40.

Montfort, when he had the King and Prince Prisoners, grew insolent.

In this condition was the *King* when *Montfort* and his Confederates Impoſed upon him theſe unreaſonable termes, calling them a *Form* of *Peace*, which was made, as 'tis there ſaid, *de conſenſu, voluntate, & præcepto Domini Regis, nec non Prelatorum Baronum ac etiam Communitatis tunc ibidem præſentium.* Theſe **Prelates** and **Barons** were ſuch as ſided with *Montfort*, and the **Community** was the *Body* of his Army, and the Citizens and others of the Faction there preſent, and the Witneſſes to this Form of Peace, **Richard Biſhop** of **Lincoln**, **Hugh Biſhop** of **Ely**, **Roger Earl** of **Norfolk**, and **Marſhal** of *England*, **Robert** *de* **Ver** *Earl* of *Oxford*, **Humfry** *de* **Bohun**, **William** *de* **Montchenſy**, and the **Mayor** of **London**, were all the Kings † great Enemies.

Toward the latter end of the ſame Record.

† For *Biged.* ſee *Pat.* 48 *H.*3.m.9 and for him, and *Bohun. Mat. Par.* fol.969. lin. 29. and fol. 995. lin. 436 for *Marchenſey.* for *Robert de Ver. Knighton.* col. 2449, lin. 35. for the two Biſhops. *Godw. de præſul.* for the Major and Citizens of *Lond. Paris* fol.999 lin.4. *Ita* 48 *Hen.*3.

And whereas 'tis ſaid theſe things were done in a Parliament at *London*, *Menſe Junii Ad. Dom.* 1264. it could not be ſo in our modern uſe and underſtanding of the word; for as we have ſeen above, the *King* and *Prince* were both Priſoners, and his *Brother Richard Earl* of *Cornwal*, and King of *Almain*, and many others of the Nobility were Priſoners likewiſe. **Roger Mortimer** and ſeveral of the Nobility and great Men with him were in *Arms* againſt

against *Montfort*, and without doubt none of the Kings Party or Friends were there, so that it must be a *Parliament* in the sense and general use of the word at that time. That is, a *great Assembly*, Convention, or Meeting, of the Faction and their Army.

m. 6. *Dors. in fine.* That Convention to Parliament *Paris* fol. 996. n. 50. *Paris* fol. 970 n. 40.

Such was that at Oxford when those deposing provisions were made (called *Provisiones Oxonienses*) in the 42 of this King *Henry* III. 1258. *Instante festo Sancti Barnabæ Apostoli, Magnates & Nobiles Terræ ad* Parliamentum *quod* Drome *tenendum fuit properabant, præceperuntque omnibus qui eisdem servitium militare debuerant, quatenus eum ipsis venirent parati veluti corpora sua contra Hostiles insultus defensuri, quod & fecerunt palliantes talem adventum, eò quod in* Walliam *contra hostes regis viderentur collatis viribus profecturi.* The Feast of St. *Bartholomew* being at hand, the *Great Men* and *Nobles* of the Land made haste to the Parliament then to be holden at Oxford, and they commanded all which held of them in Knights or Military Service to go so prepared with them; as they were to defend their Bodies against the Attempts of their Enemies; which they did disguising or covering their coming in such a manner, for that they pretended, or would seem to march with their joint

Ibid.

No such Commons or Freeholders as at this day.

It was Prorogued to *Oxford* from the Sunday after *Ascension day* unto *Barnabas day*. *Paris* fol. 958. lin. 8. lin. 27.

joint Forces into *Wales* againſt the Kings Enemies.

And that this *Record* is agreeable to the Hiſtory we have uſed, and the very ſame our Author hath cited, and that which is here laid open, will appear from the preamble and date of it.

Pat. 48 Hen. 3. m. 6. Dorſ.

The Preamble to the form of Peace.

Hæc eſt forma pacis, a Domino Rege & Domino Edwardo filio ſuo, Prælatis & Proceribus omnibus cum Communitate totâ Regni Angliæ communiter & concorditer approbata. Videlicet quod quadam Ordinatio facta in Parliamento London habito circa feſtum Nativitatis Johannis Baptiſtæ proximè præterit. pro pace Regni conſervandâ, quouſque pax inter dictum Dominum Regem & Barones apud Lewes *per formam ejuſdam Miſe præcuta Compleretur, duratura omnibus diebus prædicti Domini Regis & etiam temporibus Domini Edwardi, poſtquam in Regem fuerit aſſumptus, uſque ad terminum quem ex nunc duxerit Moderand. firma maneat ſtabilis & inconcuſſa, Dicta autem Ordinatio talis eſt.*

This is the *Form* of *Peace* generally and unanimouſly approved by the *Lord* the *King*, and the Lord *Edward* his Son, the *Prelates* and all the *Noblemen*, with the whole *Community* of the *Kingdom* of *England*; That is to

to ſay, that a certain Ordinance made in the Parliament held at *London* about the Feaſt of the Nativity of *John Baptiſt* laſt paſt, for conſerving the Peace of the Kingdom, until a Peace between the ſaid Lord the King and the *Barons* treated of at **Lewes**, according to the form of a **Miſe** then made, ſhould be compleated; to endure all the days of the aforeſaid *King*, and alſo ſo long time of the *Lord Edward*, after he ſhould be *King*, as ſhould then be appointed. The ſaid *Ordinance* is ſuch or after this manner; of which there hath been an abſtract given above. *Actum in Parliamento London menſe Junii An. Dom.* 1264. done in the Parliament at *London* in the Month of *June*, in the year of our Lord, 1264. which muſt be at the latter end of *June* after *Midſummer day*.

The laſt *Record* he uſeth in this Argument is about the ſame Form of Peace mentioned in the former. The words he inſiſts upon are theſe. *Cum ſuper præteritis Guerrarum diſcriminibus in Regno Angliæ Subortis, quædam Ordinatio ceu forma pacis de noſtro Prælatorum * Baronum & totius Communitatis Regni prædicti unanimi voluntate & aſſenſu*, &c. Pat. 48. *Hen.* 3. m. 4. Dorſ. p. 37.

So much of this *Record* as relates to the preſent controverſie, when fairly reported and compared with ſome paſſages in Hiſtory not many years before (will in my judgment) ſufficiently inform us what the **Communitas** was, and who were to be underſtood by it, in this, and the other Records.

* Here in this place he hath put in the word *Baronum*, to ſerve his purpoſe; 'tis not in the Record.

Rex

*Rex Angliæ S. de Monteforti Com. Leyc[illegible] Gilbertus de Clare Com. Gloucestr. & Hertf[illegible] Johannes fil. Johannis. Johannes de Bu[illegible] senior, Willielmus de Monte-canisio, Henr. [illegible] Hastings, Gilbertus de Gant & cæteri Baron[illegible] Magnates Angliæ; Universis Christi fideli[illegible] ad quos præsentes Literæ pervenerint, Salutem [illegible] Domino, Cum super præteritis Guerrarum dis[illegible]minibus in Regno Angliæ subortis, quædam O[illegible]dinatio ceu forma pacis, de nostro Prælator[illegible] * & totius communitatis Regni prædicti unan[illegible] voluntate & assensu provida deliberatione in[illegible] fuit,* &c. *In cujus rei Testimonium huic scri[illegible]nos Rex Angliæ, Com. Leicestr. Johannes, Jo[illegible]hannes, Willielmus, Henricus & Gilbertus pro[illegible]bis & cæteris Baronibus & Communitate Reg[illegible] Angliæ sigilla nostra apposuimus. Dat. ap[illegible] Cantuariam die Jovis proxima post festum nat[illegible]vitatis B. Virginis An. Dom.* 1264.

* Note above how our Author hath added in this place the word *Baronum*, which is not in the Record. The Feast is *Septemb.* 8.

John Fitz-John, &c. all Barons.

The King of *England*, *S. de Montfort Ea[illegible]* of *Leycester*, *Gilbert de Clare Earl* of *Glou[illegible]cester*, and *Hertford*, *John Fitz-John*, *John de Burgh Senior*, *William Montchensy*, *Hen. de Hastings*, *Gilbert de Gant*, and other Baron[illegible] and great Men of *England*, to all Christian people to whom these presents shall come, Greeting in the Lord, Whereas upon the by-past contentions of War, a certain Ordinance or Form of Peace, by provident deliberation was begun by the Will and Assent of *Us, the Prelates and the whole Community of the Kingdom* aforesaid, *&c.* In testimony of which thing, We the King of *England*, the Earls of *Leycester* and *Gloucester*, *John*, *John*, *Henry*, *William*

William and *Gilbert*, for our ſelves, and the other Barons, and the **Community** of the Kingdom of *England*, have put to our Seals. Dated at *Canterbury* on the Thurſday next after the Feaſt of the Nativity of the Bleſſed Virgin, in the year of our Lord, 1264.

This Feaſt is on the 8th of *September*.

We find in this Record a Form of Peace begun by the Aſſent of the King, the *Biſhops*, and *whole* **Community** of the Kingdom. And can our Author, or any Man ſay the **Earls** and great **Barons** gave not their conſents to that Form of Peace, or were not preſent when it was made; and if they did, they muſt be included in, and were a part of this **whole Community** of the Kingdom. All **theſe perſons** that with the *King* make themſelves Parties to this Declaration to all Chriſtian People, were **Earls** and **Great Barons**, and the very **Heads** of the **Rebels**, that now had the *King* and *Prince*, *&c.* **Priſoners**; and were the ſame perſons that Sealed it for **themſelves**, and the other **Barons** and the **Community** of the *Kingdom* of *England*: which **Community** muſt be the **Community** of the *Barons* and *Great Men*, *Tenents in Capite by Military Service*, and no other. How can the *Lords* or *Barons* ſign any thing for the **Commons** as at this day underſtood: They did not then, nor now do Repreſent them; if what our Author ſays in his **Appendix** be true; ſo that he muſt either retract what he ſaid there, or acknowledge this was the **Community** of the *Barons*, for whom they put to their Seals; and

See Dugd. Baron. Tome 1. in their ſeveral names.

The Community of *England* the Community of the Barons.

and whether he retracts the first, or confe
the Last, he gives over his Cause. But
they were the Community of the B
and Great Men only intended in this and
other *Records*, will be clear from the follo
ing impregnable instance.

Adomar or *Aymar de Valentiâ* the K
half Brother by his Mother, was Elect
Winchester, against whom the *Barons* w
much incensed; and he fearing the Effect
their hatred, withdrew himself out of
Kingdom. The *Great Men* fearing he sho
go to *Rome*, and procure himself to be c
secrated there, write to the Pope amon
other things, by four *Messengers* or *Pro
tors* which they sent to him, that he would
the fulness of his Power, remove him fr
the Administration of the Church of *Win
ster*, especially seeing he was only elected
not consecrated.

Mat. Paris Addiam. fol. 217. lin. 6. n. 30. A. D. 1258. *Hen.* 3. 42.

The Title of which Letter is:

The Letter from the Community of the Nobility to the Pope.

*Litera Missa a Communitate Angliæ Dom
Papæ.* Letters sent from the Community
England to the Lord the Pope. And the D
rection thus. *Sanctissimo in Christo Patri Alex
dro divinâ providentiâ Sanctæ Universalis Eccles
Summo Pontifici,* Communitas Comitu
Procerum Magnatum, aliorum
Regni Angliæ, *cum subjectione debitâ, P
dum Oscula Beatorum*, &c.

To the Most Holy Father in Christ, *Al
ander* by Divine Providence Pope, or Gre
Bishop of the *Universal Church*, The Co
mun

munity of the *Earls*, *Noblemen*, or *Barons*, *Great Men and others of the Kingdom of* England, with due subjection we Kiss your blessed Feet, &c. and others) which were the **Tenents by Military Service**, that held of and (*a*) attended the *Barons* and great *Tenents in Capite*, who without doubt in all Attempts against the Crown, they were forced to make Parties; and to them it must needs be the most acceptable *Priviledge* imaginable to be called in, to give their consents with their *Lords* and *Patrons*; and they could no ways carry on their designs without the assistance of their *Vassals* and *Feudataries*, or *Tenents in Military Service*; who under the pretence of *Liberty*, were drawn in by their Lords, notwithstanding in all their *Oaths* of *Homage* to them, they were bound to, and did except their Allegiance and Homage to the King, or for fear of being severely used by them in respect of *Tenures*, were wheadled or necessitated to comply with, and assist them in their tumultuous and rebellious designs; and it was from themselves and such followers as these that they pretended to the **Pope**, although the King and (*b*) great Men of the Kingdom should be willing the **Elect of Winchester** should return, *Tamen* **Communitas** *ipsius, ingressum in Angliam nullatenus sustineret*, yet the *Community* would not suffer his coming into *England*.

(*a*) See here a little before, who did by the Command of the Nobles and great Men attend at the Parliament at *Oxford* this year.

Cole first Institut. fol. 65. a.

Paris ut supra, n. 10.

(*b*) The Kings Friends.

But to put the matter beyond all doubt and exception, **Six Earls**, the **Justiciary** of **England**, and **four great Barons** put their several Seals to this Letter, **vice totius Com-**

Mat. Paris ut supra, n. 20. The Letter signed by Earls and Barons only.

Communitatis. Their names follow.

1. *R. de Clare Glovernia & Herefordia.*
2. *S. de Monteforti Legria.*
3. *E. Bigod Mareschallus Angliæ.*
4. *H. de Bohun Hertfordiæ & Essexiæ.*
5. *W. Albamarle.*
6. *J. de Placeto Warwici Comes*, and *H. Bigod Justiciarius Angliæ.*

Mat. Paris fol. 549. n. 30. *Dugd. Baron.* fol. 49. col. 2.

1. **P. de Subaudia**, he was the Queen's Uncle, and *Earl* of *Richmond*, and a great *Baron.*

Ibid. fol 703. col. 2. 706. col. 2.

2. **J** or **Johannes fil. Galfridi**; he was a descendent from *Galfrid*, or *Geofry Fitz Piers*, or **Petre Earl** of **Essex**, and *Justiciary* of *England*, had his Estate and Barony, and was Grandfather to *John Fitz-John*.

Ibid. fol. 747. col. 1.

3. **Jacobus de Audel** or **Audley**, was a potent *Baron*, whose Seat was at *Aldithley* in *Staffordshire.*

Ibid. fol. 407. col. 1. 2. fol. 408. col. 1. 2.

Eight of the eleven were of the same Stamp.

4. **Petrus de Monteforti** was a very great *Baron*; the head of his Barony was *Boldesent-Castle* in *Warwickshire*, and he was the greatest *Rebel* and *Traytor* in *England*, next to *Simon Montfort Earl* of *Leycester.* He married *Alice* Daughter to *Henry*, and Sister to *James de Audley*, next above written.

As I have before, ſo let me again ask our Author, Did theſe eleven perſons, *all very great* **Earls** *and* **Barons**, repreſent the whole **Commons** or **Community** of *England*, as at this day underſtood, or did they repreſent the **Community** of the *Barons* only, together with the **Alios** the *Milites*, which held by *Military Service* of the great *Barons*, and the leſſer *Tenents in Capite*, for the whole Community here intended muſt be one of them. Let him pitch upon which he will, *he muſt yield his Aſſertion.* For certainly theſe **Great Earls**, and **Barons** that ſealed this Letter, **vice totius communitatis**, were not choſen nor ſent by the Commons, to this **Parliament or Meeting**, nor were the **Commons** repreſented as at this day by them.

Earls and Barons did not repreſent the Commons.

Further the Title of the Popes Anſwer to theſe Letters, is very obſervable, and much to our purpoſe. *Literæ Papales miſſæ* **communitati** *Angliæ, Reſponſivæ ad eorum petitiones permiſſas ad curiam*, &c.

Auctar. Additam. fol. 222. n. 30.

The **Popes** Letters in Anſwer to the Petitions of the **Community** of *England* ſent before to our Court, &c.

Which are directed only, *Dilectis filiis*, **Nobilibus viris Conſiliariis** *Clariſſimi in Chriſto filii noſtri illuſtris Regis Angliæ ac* **cæteris Proceribus & Magnatibus** *Regni Angliæ, Salutem & Apoſtolicam Benedictionem.*

Ibid.

To our beloved Sons the **Noblemen Counſellors** of our moſt dear Son in Chriſt the illuſtrious *King* of *England*, and

the other Noble and Great Men of the Kingdom of *England*, Greeting and Apostolical Benediction.

The Commons, as at this day known, not to be found amongst the Community of *England* in old Historians.

How he will find any of our Commons as at this day known amongst this Community of *England*, I understand not. If he will say the Titles of these *Letters*, were only the Notes of *Mat. Paris* upon them, in the old *MS.* called the *Book* of *St. Albans*, or his *Additamenta*, and so not much to be regarded. I answer that in his time he was a very knowing Man, and is now incomparably the best *Historian* we have; and if these Titles were his Notes, (which cannot be denied) we are sure he truly noted and delivered to us the true sense and meaning of Communitas Anglie, after he had perused the Popes Answer, who were only the Nobiles viri, *Regis Consiliarii*, and the Proceres & Magnates *Anglie*; that is Baronagium or Barnagium *Anglie* who, as *Paris* saith, wrote this very Letter *to the Pope*.

Fol. 978. lin. 10.

And besides this Matter of Fact, there may be reason given, though I shall not lay any stress upon it, why the Earls and Barons or Baronage, were in those times called the Communitas Regni; for as Bracton hath it, who was a Judge in the time of *Henry* III. and *Edward* I. *Regnum in Comitatibus & Baroniis constitutum dicitur*, the Kingdom is said to consist of *Earldoms* and *Baronies*. And in this sense it was that Eadmer says *in subsequenti Nativitate Domini Christi Regnum Angliæ ad curiam Regis Londoniæ pro more convenit*, and *Paris* often calls the

P. 76. b. lin. 45.

Hist. Norm. f. 101. lin. 3. Fol. 256. n. 50.

the Temporal Barons, *Regnum. Conveniente tandem Archiepiſcopo Cantuarienſi cum Epiſcopis & Magnatibus Regni Lundonii in præſentiâ Regis, tractatum eſt ibidem per triduum inter* **Regnum & Sacerdotium**, &c.

The Temporal Earls and Barons called *Regnum*.

And in a Letter from the *Abbats*, and *Priors* to the Pope, amongſt other things, they beſeech him to abſtain from giving Eccleſiaſtick Preferments to Strangers, eſpecially ſuch as were in the Patronage of the *Nobility*, by which means, ſay they, *provideat ſanctitas veſtra ut* **Regnum & Sacerdotium** *nullatenus ſint diviſa*; and in very many places the like Expreſſions.

Ibid. fol. 700. n. 40.

But further, the **Baronage** or *Nobility* including the *Tenents in Capite*, and ſuch great Military Men as held of them by Military Tenure, are called frequently the **Univerſitas Anglie** or *Regni*, and **Univerſitas Baronagii** or **Barnagii**, which is the ſame with **Communitas** *Regni* or *Angliæ*.

See the Anſwer to his third Obſervation.

But I ſhall leave the clearing of this Point until I come to his third Obſervation, that under the Phraſe of *Baronagium Angliæ* both *Lords* and *Commons* were comprehended.

P. 108.

And now to anſwer his Demand at the cloſe of this Argument, who the **Communitas** were after the *words* **Prelati Barones & Magnates**? I affirm they were all theſe put together, including alſo the *Tenents in Capite*, and perhaps ſuch as held of them by Military Service, that were the **Communitas Anglie, tota Nobilitas Anglie, Univerſitas Baronagii,**

P. 38.

Communitas Anglia, or the Community of *England*, were all the Orders of the Nobility put together.

Universitas Regni, &c. as will be more fully made out upon the consideration of his third Observation, as aboveſaid.

The Fifth Argument *Conſidered.*

P. 39. WHich is grounded upon a *Claim* by Petition of the Commons, not *Proteſtation*, as he inſinuates, That they have ever been a *Member* of the *Parliament*, or that *no Statute*, or *Law*, ſhould be made without their Aſſent.

Rot. Parl. 2 *Hen.* 5. p. 2. n. 10. The *Petition* it ſelf, with the *Kings* Anſwer, and what elſe is contained in the ſame Number in this Record follows.

n. 10. *Item fuit a Remember que les Comens baillerent a Roy noſtre Seignour treſſoverain en ce preſent Parlement un Petition dont le tenur enſuit de mote en mote.*

Alſo it is to be remembred that the Commons delivered a Petition to the King our moſt Soveraign Lord in this preſent Parliament, the Tenor of which follows word for word.

Our Soverain Lord.

YOur humble and trewe Lieges that ben come for the Comens of your Lond byſeechin on to your ritz. Wiſſeneſſe. Tha ſoo as hit hath evere be their Libertie and Freedom, that thare ſhould noo Statute, noo Law be made of laſs than they yef thereto thair Aſſent conſidering that the Comens of your Lond, the which that is, and ever hath be a Member *of your* Parlement, *been as well aſſentirs as peticioners: that fro this time forward by compleint of the Comens of any of miſchief asking Remedy by mouth of their Speaker for the Comens, oather elſe by Petition written, that there nevere be noo Law made there upon, and ingroſſed as Statut, and Law, neither by additions, neither by diminution, by noo manner of terme, ne termes, the which ſhold change the Sentence, and the intent axked by the Speker mouth, or the peticions by fore ſaid yeun up in wryteing by the manner foreſaid without aſſent of the foreſaid Comens, conſydering our Soverain Lord that it is not* in nee wiſe the entent of your Comens, gif it be ſe that they arke you by ſpeking or by wyteing too things or three, *or as many as theym liſt, but that evere it ſtoud* yn the freedome of your hie Regalie to grant which of the too you luſt, and to werune the Ramanent.

At this time it was the practice of the Commons to complain of Miſchiefs, and ask Remedies, &c.

To deny.

The King of his Grace eſpecial grauuteth that fro beneceforth, nothing be enacted to the Peticion of his Comun, that be contrary *of hir asking*

what by they ſhulde be bounde *without* thair Aſſent, *ſaving alwey to our Liege Lord his* * reall prerogatyf to grant and deney *what him* luſt *of your* petitions *and asking aforeſaid.*

* Royal.

Ibid. n. 10. Alſo the King having a great care of the Eſtate of Holy Church, and the whole Kingdom, *del advys & aſſent des Seignours Eſpirituels & Temporels & a la* Requeſt *de ſes Comens avant ditz, faitz certain Eſtatutz Declaracions & Ordinances. By advice and aſſent* of the Lords Spiritual and Temporal, and at the requeſt of his Commons aforeſaid, made certain Statutes, Declarations, and Ordinances, *&c.* which follow in the Record, N. 11. *&c.*

The Deſign of that Petition, The deſign of this Petition was not to claim the Antiquity of their exiſtence, but their Right, that nothing might be Enacted without their Aſſent, contrary to their Intent and Liking; and to ſhew that it was never done ſince the Commons were a Third Eſtate, or as they ſay a *Member* of *Parliament*, and to prove that which no body denies, that the Aſſent of the Commons is now required to the making of Statutes and Laws he runs into a needleſs Diſcourſe, and cites many Authorities ſince the 49 of *Hen.* III. that the *Commons* became a third Eſtate, which is what he further ſays upon this Argument. When as if he had attended to the Kings Anſwer to this Petition, and what immediately follows it in the very *ſame Number*, upon the *Parliament Roll* as 'tis here cited, he might have

have found the manner how the Commons concurred to the making of Laws at that time, without troubling the Reader with his Citations and Obſervations on them to no purpoſe. P. 41.

But he takes only ſo much out of this Petition as he thinks ſerves his turn, and unhandſomly calls it a *Claim* and Proteſtation in page 39, and lays the great ſtreſs of his Argument upon the words, hath ever be. What, were the Commons of *England* as now Repreſented by *Knights*, *Citizens*, and *Burgeſſes* ever an eſſential conſtituent part of the Parliament, from eternity, before man was created? Or have they been ſo ever ſince *Adam?* Or ever ſince *England* was peopled? Or ever ſince the *Britains*, *Romans*, and *Saxons* inhabited this Iſland? Certainly there was a time when they began to be ſo repreſented. And that is the Queſtion between us, which whether this Gentleman, or my ſelf, be in the right, I leave to any impartial Judge. P. 40.

In the Sixth Argument there is nothing worth Notice.

The Seventh Argument *Conſidered.*

His own words, p. 55.

WHich he draws from the defect and loſs of *Parliament Rolls* of *Henry the Third*, and *Edward the Firſt*, and from the *Univerſal Silence* of all *Records*, and our Ancient Hiſtorians contemporary, and ſucceeding 49 *Hen.* 3. till our days.

The Parliament Rolls of *Hen.* 3. and *Edw.* 1. wanting.

I confeſs the *Parliament Rolls* of *Henry the Third*, and *Edward the Firſt*, are wanting, ſo that we cannot be ſo well aſſured what was done in the Parliaments of thoſe times, as we may be afterwards; yet there are **Writs of Summons** extant upon the **Cloſe Rolls**, before, and in thoſe times, by which the *Biſhops*, *Earls*, and *Barons*, were ſummoned to *Parliaments* or *Great Councils:* and we have all the *Cloſe Rolls* of King *John*, and *Henry the Third*, in the Dors of which anciently moſt of the Writs of Summons to the *Commons* in *Other Kings Reigns* are entered (few on the Patent Rolls, which we have likewiſe) 'Tis therefore very ſtrange, if the Commons were repreſented by *Knights*, *Citizens*, and *Burgeſſes*, and *ſummoned* to *Parliament* as at this day, that there cannot be found any *Summons* to them upon theſe Rolls, as well as to the Lords. For the Readers ſatisfaction,

There are Writs of Summons in thoſe times.

I

I shall set down a Writ of Summons to the Lords in King *John's* Reign, and another in *Henry* III.

Rex Episcopo Sarum, mandamus vobis rogantes quatinus omni occasione & dilatione postpositis, sicut nos & Honorem nostrum diligitis, sitis ad nos apud London die Dominicâ proximâ ante Ascensionem Domini, nobiscum tractaturi de magnis & arduis negotiis nostris & communi Regni nostri utilitate; Quia super his, quæ à Rege Franciæ per nuntios nostros & suos nobis mandata sunt, unde per Dei Gratiam bonum speramus provenire, expedit habere Consilium & aliorum Magnatum terræ nostræ quos ad diem illum & locum fecimus convocari. Vos etiam ex parte nostrâ & vestrâ Abbates & Priores Conventuales totius Diœces. vestræ citari faciatis, ut ad Concilia prædicta vobiscum intersint, sicut diligitis nos & communem Regni utilitatem.

Cl. 6. *Johannis* m. 3. Dors. Summons to Parliament in the time of King *John*. *An. Dom.* 1205.

Teste, &c.

Rex venerabili in Christo Patri W. Eborum Archiepiscopo salutem, mandamus vobis, rogantes quatinus sicut nos & Honorem nostrum patrem & vestrum diligitis, & in fide quâ Nobis tenemini, omnibus aliis negotiis omissis, sitis ad nos apud London â die Sancti Hillarii, in quindecim dies ad tractandum nobiscum, una cum ceteris magnatibus nostris quos similiter fecimus convocari de arduis negotiis nostris statum nostrum, & totius Regni nostri

Claus. 26 *H.* 3. m. 13 Dors. Summons to Parliament in the time of *H.* 3. *An. Dom.* 1242.

ſtri ſpecialiter tangentibus, & hoc nullatenus Omittatis. Teſte Rege apud Windleſ. Decimo quarto die Decembr.

Eodem modo ſcribitur omnibus Epiſcopis Abbatibus Comitibus & Baronibus.

The whole Tranſactions of this Parliament, according to the date of the Writ, are to be found in *Mat. Paris*, *fol.* 581, & 20, *&c.*

Theſe are ſufficient to ſhew there is not ſuch an *Altum ſilentium*, ſo deep a ſilence of all *Records* as this Gentleman averrs. And for our *Antient Hiſtorians*, *Mat. Paris*, who Wrote his *Hiſtory* at the *Command* of *Hen.* 3. *and died in the* 43*d year of his Reign*, 1259. doth abound in remembring *General Councils*, *Colloquia*, or *Parliaments*, and things agitated in them; As alſo *William Riſhanger*, a Monke of the ſame Abby, who continued his *Hiſtory* at the command and charge likewiſe of the ſame *King*; of which I preſent the Reader with this **Collection**, and leave him to judge, whether in thoſe dayes it is probable, the **Commons**, as at this day repreſented, were an Eſſential part of Great Councils, or Parliaments, and ſo end my Anſwer to this Argument.

Anno

Anno Gratiæ 1204. *in Craſtino circumciſionis convenerunt ad* Colloquium *apud Oxonium* Rex & Magnates Angliæ, *ubi conceſſa ſunt Regi Auxilia Militaria, de quolibet ſcuto duæ Marcæ & dimidium.* *Mat. Paris*, fol. 209. n. 50.

Interfuerunt Concilio apud Sanctum Albanum Gulfridus filius Petri (*he was Juſticiary*) & Epiſcopus Wintonienſis, *cum* Archiepiſcopo & Epiſcopis & Magnatibus *Regni.* Ibidem, fol. 239. n. 40.

Legatus grande Concilium apud Sanctum Paulum in Urbe Londinenſi congregavit, ubi congregatis Archiepiſcopis, Epiſcopis, Abbatibus, Prioribus, Comitibus, Baronibus, & aliis *ad negotium interdicti ſpectantibus, propoſuit*, &c. Ibidem, fol. 249. n. 30.

Anno Domini 1221. *Rex Henricus ad natale* Domini *apud Oxonium tenuit* Curiam ſuam, Præſentibus Comitibus & Baronibus Regni. Ibidem, 310. n. 20.

In Octavis Epiphanii Hen. Rex *apud* Londonias *veniens cum* Baronibus *ad* Colloquium. Ibidem, fol. 316. n. 50. 1223.

Rex cum Archiepiſcopis, Epiſcopis, Comitibus, Baronibus, & aliis multis *convenerunt ad* Colloquium *in Octavis Sanctæ Trinitatis apud Northampton de regni negotiis tractaturi: voluit enim Rex uti conſilio* Magnatum *ſuorum de Terris tranſmarinis.* Ibidem, fol. 320, n. 20.

Anno

Ibidem, 367. n. 50. *Anno Domini* 1231. 7 *Calend. Febr. convenerunt ad* **Colloquium** *apud* Weſtmonaſterium, Rex *cum* Prælatis & *aliis* Magnatibus Regni.

Ibidem, fol. 372. n 40. 16 *Hen.* 3. *Anno Domini* 1232. *Nonas Martii ad* **Colloquium** *apud* Weſtmonaſterium *ad petitionem* Regis, Magnates Angliæ, *tam* **Laici** *quam* **Prelati.** *when the King told them he was much Indebted, by reaſon of his Wars beyond Sea, and deſired Ayd of them*, Comes Ceſtriæ Ranulphus *pro* **Magnatibus** Regni loquens, Reſpondet; Quod **Comites, Barones, & Milites**, qui de eo tenebant in capite, cum ipſo ibi erant corporaliter præſentes & pecuniam ſuam ita unanimiter effuderunt, quod inde pauperes omnes receſſerunt, unde Regi *de* jure auxilium non debebant, & ſic petitâ Licentiâ, Laici omnes receſſerunt.

Ibidem, fol. 377. n. 50. *eodem Anno.* *Apud* Lamheiam *in exaltatione Sanctæ Crucis, ad* **Colloquium** *coram Rege convenerunt* Epiſcopi *& aliarum* Eccleſiarum Prælati, *cum* **proceribus** Regni, *conceſſa eſt Regi quadrageſima pars Mobilium.*

Ibidem, fol. 397. n. 10. 1234. 18 *H.* 3. *Convenerunt ad* **Colloquium** 5 *Id. Apr. Rex cum* Comitibus *&* Baronibus, *&* Archiepiſcopis, *cum ſuis* Suffraganeis.

Ibidem, fol. 419. n. 30. 1236. 3 *Calend. Maii congregati ſunt* **Magnates** Angliæ *Londini ad* **Colloquium** *de negotiis Regni tractaturi.*

1237. *Scripſit*

1237. *Scripſit Rex omnibus* Magnatibus *ſuis, ut coram eo, & Domino Legato, in feſto exaltationis Sanctæ crucis apud* Eboracum *convenirent, de Arduis Negotiis regnum contingentibus tractaturi.* Ibidem, fol. 446. n. 20. 21 *H* 3.

Imminente Purificatione B. V. totius Angliæ Nobilitas tam Prelatorum *quam* Comitum, & Baronum ſecundum Regium præceptum *eſt* Londini congregata. Ibidem, fol. 580. l. 6. *An. Dom.* 1242. 26 *H.* 3.

Die Tranſlationis B. Thomæ Martyris habitum eſt Magnum Concilium *inter* Regem & Magnates *apud* Wintoniam *ſuper multiplici Regni totius & maximè Eccleſiæ Deſolatione.* Ibidem, fol. 709. n. 30. *An. Dom.* 1246. 30 *Hen.* 3.

In Craſtino Purificationis Beatæ Mariæ Dominus Rex *cum ſuis* Magnatibus *tractatum habens diligenter per plures dies concilium Wigens, Dies protelavit.* Ibidem, fol. 720. n. 40. *Anno Domini* 1247. 31 *H.* 3.

Dominus Rex Juſſit omnem totius Regni Nobilitatem *convocari, de ſtatu iſtius tam manifeſte pericli tantis*, &c. *Prælatos autem maximè ad hoc* Parliamentum *vocavit arctiùs, quia videbat eos Rex tam frequenter depauperari per* Papales *exactiones.* Ibidem, fol. 730. l. 6. 1247. 31 *H.* 3.

In Octavis Purificationis B. V. edito Regio convo- Ibidem, 743. n. 40. 1247. 31 *H.* 3.

convocata convenit totius Regni Angliæ **Nobilitas** Londini, *advenerunt igitur illuc, exceptâ* Baronum, Militum Nobilium, *nec non &* Abbatum, Priorum *&* Clericorum Multitudine copiosa, *Novem* Episcopi, *cum* totidem Comitibus, *which was Prorogued to Fifteen dayes after* John Baptist.

Ibidem, 924. n. 40. 1255. 39 *H.* 3.

In Quindenâ Paschæ quæ vulgariter **Hoke-day** *appellatur, convenerunt* Londini *omnes* **Nobiles** Angliæ, *tam* **viri Ecclesiastici** *quam* **Seculares**, *ita quod nunquam tam* Populosa Multitudo *ibi antea visa fuerit congregata: Tandem in hoc convenerunt communiter ut Regi renuntiaretur ex parte* **Universitatis** *quod negotium*, &c.

Ibidem, fol. 963. n. 40. *Ann. Dom.* 1258. 42 *Hen.* 3. Page 55.

Et post Diem Martis quæ vulgariter **Hoke-day** *appellatur factum est* **Parliamentum** *Londini.*

These several Parliaments, or Great Councils, besides those which are more particularly taken notice of in this Answer, were held in the Reigns of King *John*, and *Hen.* 3. and therefore not such a silence of Parliaments in the Historians of those times, as our Author would have the World believe; and from these, many hints may be taken, and observations made, which are repugnant to his Errors, and if he can, let him

pick

pick out any Commons in these Great Councils, as at this day chosen and represented.

His 8th and 9th Arguments, also his first and second Observations upon the whole Matter have nothing in them worthy a Serious Consideration.

The

The Third Levelling Observation, *by which he insinuates a parity of all Men, and makes* Lords Commons, *and* Commons Lord; *I shall Examine, and shew the Vanity of it.*

FRom the various acceptation of the word *Baro*, and an end or two of *History* which he never understood, he concludes that under the *phrase* of **Baronagium Angliæ**, both *Lords* and *Commons* were comprehended. The various significations of the word **Baro**, he grounds upon the various meaning of the word **Alderman-nus**, and sayes, as there were *Aldermanni Regis*, *Aldermanni Comitatûs*, *Civitatis*, *Burgi*, *Castelli*, *Hundredi*, five *Wapentachii*, & *Novem-decimorum*; so there came instead of them, when that name was changed, or worn out, *Barones Regis*, *Barones Comitatûs*, *Barones Civitatis*, *Barones Burgorum*, *Barones Castellorum*, *Barones Hundredorum* five *Wapentachiorum*. But this only is a fancy of his own, for of all these **Barons** he hath reckoned up, he cannot shew half of them in any Author I ever saw, nor can he shew

Page 108.

Page 109.

Ibidem.

shew any of them taken in the same sense, that **Aldermen** were; for these were alwayes **Officers** and **Magistrates**; So Sir *Henry Spelman*, *Quo nomine Magistratus semper indicatur*, by which name of **Alderman**, a *Magistrate* was alwayes signified. Ard in the same Column, *Principes igitur & Rectores Provinciarum Comites, Præsides, Senatores, Tribunos generali nomine alias* atque *alias* **Aldermannos** *appellabant*. They called *Princes*, *Governors* of *Provinces*, *Earls*, *Presidents*, *Senators*, *Tribunes*, by the general name of **Aldermen**. So the Kings **Alderman** was the Kings **Justiciary**, the **Alderman** of the **County** was the **High Sheriff**, or other *Great Minister* of *Justice*. The **Aldermannus** *civitatis*, *Burgi*, seu *Castelli*, was the **Major**, or **Baylif** of the *City*, or *Town*, and the **Alderman** of the *Castle* was the **Castellan**, or **Constable**, or *Governor* of the *Castle*; The **Alderman** of the *Hundred* was the **Centenary**, **Hundredary**, or *Chief Magistrate* that had the *Care* of the *Hundred*. But the **Barones Regis** as such, were not *Officers* or *Magistrates*, they were only Great *Barons*, that possessed Great *Estates*, and held of the *King* by **Military Service** in *Chief*; So the **Barones** *Comitatus* were not **Magistrates**, but only **Feudal Barons**, and also **Milites** and **Freeholders**, that were *Inhabitants* and *Landholders* in the *County*. Nor were the **Barones** *de London*, *Eboraco*, &c. *Magistrates* of the Cities, &c. but *only cives*, & *homines* de *London*, &c. Citizens

Alderman was a word signifying an Office. *Glossar.* fol. 42. col. 2. l. 20. Line 33.

Dukes, Princes, Earls, which were the Knights Great Officers, were called Aldermen, *Seld. Tit.* hon. fol. 505, & 509.

Spel. Glossar. fol. 25. col. 2.

Ibidem, fol. 26. col. 1, 2.

Ibidem, fol. 69. col. 1. *Baro*, not a Word of Office

Ibidem, fol. 70. col. 2.

zens and Inhabitants of *London* and *York*, and other **Barons** *then these*, and *such as these*, he can find none: Nor can he ever shew that **Baro** was a Name of **Office**, and generally appropriated to the *Magistracy*, as **Aldermannus** was. From whence it is clear, he understands not the true *acceptation* of these *two words*; but suppose he did, Will he conclude because the word **Barones** signified sometimes the *Great* **Barons**, sometimes the **Milites**, and **Free-Feudal-Tenants**, that the **Commons** were part of the **Baronage** of *England*, and comprehended in those words? He may as well say, that all Men of *England* were part of the **Baronage**, because **Baro** signifies a *Man*. Or that every *Cobler*, *Chimney-sweeper*, or inconsiderable Tradesman in **London** are part of the **Gentry** of *England*, because they take upon them, and are called **Masters**, and **Mistresses**. Sure Sir *Henry Spelman* understood the **Baronage** of *England* to be Another thing, when he said **Barones** *Classes supra omnes plebeias elati inter Pares regni numerantur*. The **Barons** being raised above all *Orders* of the *Plebeians*, are numbred amongst the *Peers* of the *Kingdom*. And the great *Selden* tells us, what he meant in his * *Notes* upon *Eadmer*, and the very place by our Author cited. The Phrases, saith he, of *Tenentes per* **Baroniam** & *Servitia Militaria* & *Milites* & *Barones Tenentes in Capite de Rege*, are used for the same persons (*Baro*, also *& qui de Rege tenent in Capite*, are so used) in two *Laws*,

The Barons of the Exchequer were originally the great Barons of the Kingdom, and thence the Name.

The Lords Court was *Curia Baronum*, Court of Freeholders, not *Baronis*, and sometimes *Curia Militum*.

Ibidem, fol. 68. col. 1. *Tit. Hon.* fol. 575. p. 110.

* The words of *Selden* upon *Eadmer*, are upon the word *Barones*. *Vocabulum nempe alia notatione usurpari quam vulgo, neque eos duntaxat ut hodie significare quibus peculiaris Ordinum Comitiis locus est.* That is, it signifies all Tenants in Capite, as he here explains himself, and not ordinary Men, as our Author would have it.

Laws, the one of *William* the First, the other of *Henry* the Second, touching Excommunication, as is noted upon *Eadmerus*, p. 168. & seq. These are the very words of *Learned Selden*, and therefore in this place of his Notes upon *Eadmer*, which is brought to confirm this *Gentlemans* conceit, he did not mean the **Commons**, or any Ordinary Persons, but the *Tenents in Capite*, or *Peers*. And in another place, he sayes, the Honorary Title of **Barones**, and *pares Baronum* are equally both *Parliamentary*, and may signifie the whole **Baronage**.

Tit. Hon. fol. 570.

The Learned *Camden* likewise a little after the words he hath cited out of him, speaks thus. *In Chartis & Historiis ejus seculi omnes fere Nobiles dicuntur Barones, plenaque Honoris illa appellatio, sane tunc erat*, & nomine Baronagii Angliæ, omnes *Superiores quodammodo Regni Ordines Scilicet Duces, Marchiones, Comites, & Barones, continebantur, sed ad summum honorem prevenit, ex quo Rex Hen. tertius ex tanta multitudine, qua seditiosa & Turbulenta fuit, Optimos quosque rescripto ad Comitia Parliamentaria evocaverit.* In the Charts or Charters, and Histories of that Age (toward the Latter end of *Henry* the Third) almost all *Noblemen* were called *Barons*, and that appellation was then full of *Honor*, and in the Name of the *Baronage* of *England*, as it were all the *Superior Orders* of the *Kingdom* (that is to say) *Dukes*, *Marquesses* (meaning such as had those Titles afterwards) *Earls* and

Brian, fol. 122.

* Our Author hath left out the word **Superiores** and Cites the place thus; *Nomine Baronagii Angliæ Omnes quodammodo regni Ordines continerentur*, P. 111. and cites no more.

Barons were contained. But it arrived at the greateſt height of an honorary Title ſince *Henry* the Third, out of ſo great a *Multitude*, which was *Seditious* and *Turbulent*, called the beſt and chiefeſt of them only by *Writ* to *Parliament*.

p. 111. Theſe are the moſt truly *Learned Antiquaries*, whoſe *Authority* our *Author* ſayes is ſuch, that it would be a *preſumption* in him to go about to add any thing. Yet he accounts it no *preſumption* to *pick here* and *there* a *ſhred* out of them, which *ſounds like ſomething* he *fancies*, and to urge it in favor of his own *Whimſey*, againſt the declared *Minds* and *Intentions* of thoſe *Authors*. And this is the excellency, and perfection, and common practice of this Gentleman, to bring *Fragments*, *Phraſes* and *Words* out of *Records* and *Hiſtories*, which ſound like, or ſeem to countenance his *Inventions*, contrary to the true meaning of thoſe *Records*, and right ſenſe of *Hiſtorians*. As I have already in many inſtances ſhewed, and do deſire the Reader with Attention, to take notice of theſe moſt notable ones that follow.

Anno Dom. 1245. *Paris*, fol. 658. n. 40, 50, & 619. l. 1. at this day 480000 *l.* In the 29 of *Henry* the Third, there were generally great Complaints of the Papal *Exactions*, and the *King* made ſenſible of it, upon inquiry found, that the Pope annually received from *England* 60000 Marks. *Tunc Dominus Rex cepit deteſtari inſatiabilem Romanæ Curiæ cupiditatem, & totius Regni, imò etiam & Eccleſiæ per eam factas injuriosa*

rioſas occupationes illicitaſque rapinas; compoſitâ igitur per Regni **Univerſitatem** *Eleganti Epiſtolâ in quâ extortiones papales minus execrabiles, & exactiones multiformes* **Legatorum** *ejus, & quorundam clericorum poteſtate inauditâ fungentium continebantur. Cum quâ* **viri Nobiles** *ac* **diſcreti** *ad Concilium deſtinantur gravem ſuper his & præcipuè ſuper exactione Tributi in quod nunquam conſenſit regni Univerſitas coram concilio querimoniam repoſituri. Electi ſunt igitur & ad hoc* **nomine** *totius* **Univerſitatis** *Regni Angliæ ad Concilium Lugdunenſe Miſſi,* **Comes Rogerus Bigod, Johannes filius Galfridi, Willielmus** *de* **Cantelupo, Philippus Baſſet, Radulphus filius Nicholai,** *&* **Magiſter Willielmus Poweric** *Clerici.*

Council of *Lyons.*

Ibid. n. 10.

Five Commiſſioners ſent to the Council of *Lyons.* Mr. *William Powerick* was a Lawyer.

Then the King began to deteſt the inſatiable Avarice of the *Court* of *Rome*, the *Injurious Incroachments*, and *Unlawful Rapines* made by it upon the whole *Kingdom*, and the *Church* alſo. Therefore there was an *Elegant Epiſtle* compoſed by the *Univerſity* of the *Kingdom*, which contained the *execrable Papal Extortions*, and many *Exactions* of his *Legates*, and of certain Prieſts executing an unheard of Power. With which *Epiſtle*, *Noble* and diſcreet Men were ſent to the *Council*, to make Complaint of theſe things, and eſpecially the *Exaction* of *Tribute*, unto which the **Univerſity** of the Kingdom never gave their conſent; there were therefore choſen, and for that purpoſe ſent in the

p. 112. *Name* of the *University* of *England* to the *Council* of *Lyons*, *Earl Roger Bigod*, *John Fitz-Geofry*, *William de Cantelupe*, *Philip Basset*, *Ralph Fitz-Nicholas*, and Mr. *William Poweric Clerk*. And our Author adds **Milites**, after the last four Lay-men, as he finds it in *Mat.* of *Westminster*, by which I suppose he thinks he hath an advantage, because he thereby makes it appear, that the *Milites* were part of the **Universitas Regni** *Anglie*. I do not deny it, for the great **Milites** were often stiled *Barons*, & *Barons Milites*. *Nam* **Miles** (saith Sir *Henry Spelman*) *quem* Baronem *vocabant non à* Militari Cingulo (*quo equites creabantur*) *sed a* **Militari feodo** *quo alias possessor &* **libere Tenens** nuncupatus *est*, nomen sumpsit. For the name of *Miles* was not from the Military Girdle, or Cincture, by which Knights were created, but from the *Military Fee* which the *Miles* injoyed, from whence he was sometimes called a *Free-tenent*; Such as had *Lands* given them for, or such as held *Lands* by *Military Service*, and did *Homage* and *Fealty* to those, of whom they held their Lands. And in this sence *Mat. Paris* calls all the Temporal *Nobility* **Milites**; When in the Parliament 37 of *Henry* the Third, he sayes, *à* **Militibus** *concessum est scutagium illo Anno ad Scutum tres Marcæ*; at which time the *Clergy* had given the *tenth part* of their Revenue for three years. A brief Account of these four persons, what they were, will inform us, that Barons and Great Men, were, in Historians, called

Fol. 321. n. 30.

Glossar. fol. 72. col. 1. See the same derivation of *Miles. Cambd. Brit.* fol. 123.

The Name of *Miles* from the Military Fee.

Fol. 866. n. 20.

The Temporal Nobility, all called *Milites*.

called simply *Milites*, in the Notion Sir *Henry Spelman* hath given of the word.

1. *John Fitz-Geofry* was Son and Heir to *Geofry Fitz Piers* Earl of *Essex*, and Father to *John Fitz-Geofry*, and Grandfather to *John Fitz-John* the Great *Rebel*, that joyned himself with *Simon Montfort*. *Dugd. Baronage*, Tom. 2. fol. 706. Col. 2. fol. 707. col. 1.

2. *William de Cantelupe* was a *Baron*, or Great *Tenent in Capite*, paid *Ayd* this very year towards the Marriage of the *Kings* Eldest Daughter, for 27 *Knights Fees*, and three parts. Ibid. fol. 732. col. 2.

3. *Phillip Basset* was at this time a great *Baron*, and made *Justice* of *England* 45 *Henry* III. Ibid. fol. 384. col. 1, 2.

4. *Ralph Fitz-Nicholas* was at least a *Great Tenent in Capite*, and Father to *Robert Fitz Nicholas*, who, among other *Great Tenents in Capite*, was summoned to appear at *Chester*, on Monday before the Feast of St. *John Baptist*, 42 *Hen.* 3. to March against *Leuellin Prince* of *Wales*: He was a *Baron*, *vide*, *Mat. Paris*, *fol.* 590. *n.* 40. Cl. 24 *Hen.* 3. m. 10. Dors.

These were the four Barons that *Mat.* of *Westminster* calls Milites, and our *Author* would have *common persons*, but by what right let the Reader Judge.

Mat. Par. fol. 658. n. 40.

By what precedes the Account of the Election of this *Earl*, and four *Barons* with their **Secretary** *Poweric*, by the **University** of the *Kingdom* to go to, or represent them at the *Council* of *Lyons* as *Commissioners*,

Ibid. 29 *Hen.* 3. 1245.

it appears they were elected in *Whitsun-week*, and upon the 30th day of *June* next following, at a full **Conceament** intended to have been held or exploited at **Luton** and **Dunstable**; which was forbidden by the *King*.

Fulco Fitz-Warini.

Ibid. 659. n. 10.

* He was one of the Great Barons Marchers towards *Wales*, *Dugd. Bar.* Tom. 1. fol. 444. col. 2.

* **Fulco Fitz-Warin** was sent *ex parte* **Universitatis Regni** *ad Magistrum Martinum Papæ Clericum*, &c. on behalf of the *University* of *England* to *Master Martin* the *Popes Clere* (who was his Legate and Instrument of the great exactions aforesaid) which *Fulco* beholding him with a stern countenance, bad him immediately go out of *England*; to whom Master *Martin* said, Who commands me to do this? Is it from your self? To whom *Fulke* answered, *hoc tibi per me mandat* **Armatorum**, *qui nuper apud Luitoniam & Dunstapliam apparuerunt* **Universitas.** The *University* of Military Men, that lately appeared at *Luton* and *Dunstable* by me do command you to do this; and bad him again be gone, or he and his Followers would in three days be cut in pieces. *Master Martin* much terrified and affrighted at this Salutation, went immediately to the King, and told him what he had heard, and asked him whether it was done by his Authority. The *King* told him he was not the Author of any such thing, *But* my **Barons** (saith he) *can scarce contein themselves from an Insurrection against*

Paris ut supra. n. 20.

The University of Armed men.

Ibid.

against me, for that I have so long suffered your depredations and Injuries in my Kingdom.

The Story makes it plain who were the **Universitas Regni**, to wit, the **Barons**, or the **Universitas Armatorum**, the *University* of *Armed* or *Military men* convened to hold a full Torneament, who the *King* calls his *Barons*.

Note the University of the Kingdom were the Kings Barons.

And who also the **Universitas Regni** were that instructed their *Procurators* to declare in the *Council* of *Lyons* as aforesaid, that **they** never *consented* to the *exaction* of *Tribute* by the Pope; 'tis very plain from the complaint of **William Powerie** their **Procurator** or *Orator* at the *Council* of *Lyons* delivered in these words.

He was a Lawyer.

Assidentibus ibidem Anglicanæ **Universitatis** *Procuratoribus prænominatis Magister Wilhelmus de Powerie eorum* **Procurator** *assurgens gravamina Regni Angliæ ex parte* **Universitatis** *Angliæ proponens; conquestus est graviter. Quod Tempore Belli per curiam Romanam extortum est tributum injuriosè in quod nunquam* **Patres Nobilium** *Regni vel ipsi consenserunt, nec consentiunt, neque in futurum consentient, unde sibi petunt exhiberi justitiam cum Remedio.* The Procurators of the University of *England* beforenamed sitting in the Council, Master *William Powerie* their **Procurator** stood up, and propounded the grievances of the Kingdom of *England*, on the behalf of the **University** of *England*, complaining grievously that in the time of War there was

Ibid. fol. 666. n. 40. A Secretary to the other side.

a Tribute injuriously imposed on the Kingdom by the Court of *Rome*, to which the * *Fathers* of the Noblemen of the Kingdom, nor they *themselves* never consented, nor do, or ever shall consent, upon which they crave *Justice* with *remedy*. To which complaint the Pope making no Answer, *William Powerie* thereupon produced an *Epistle* which declared the many *Extortions* made in *England* by the *Roman Court*, thus directed.

* The University of *England* that sent these Procurators, and made this complaint, are called here the Noblemen of the Kingdom, that craved Justice.

Ibid. n. 30. *Reverendo in Christo Patri Innocentio Dei gratia summo Pontifici*, Magnates & Universitas *Regni*, &c. To the Reverend Father in Christ *Innocent* by the Grace of God *Pope*, the Great Men and University of *England*, &c. What this *University* was, that made this complaint we have just now heard.

Ibid. 696. n. 10. From this *Council* the Pope wrote to the *Bishops* and *Patrons* of Churches through *England*, and to the King, that they should have satisfaction in all their Grievances; yet not performing his promises, *medio Quadragesimæ videlicet die quâ cantatur* Letare Jerusalem, *Edicto Regio convocata*, *convenit ad* Parliamentum generalissimum *totius Regni Anglicani* totalis *Nobilium Londini, videlicet* Prælatorum *tum* Abbatum & Priorum, *quam* Episcoporum, Comitum *quoque &* Baronum *ut de statu regni jam vacillantis efficeciter, prout exegit urgens necessitas contrectarent.* In the middle of *Lent* (that is to say) on the day on which the Hymn, *Lætare Jerusalem* was usually sung, being called by the *Kings Writ*, there

Ibid. l. 1.

A most general Parliament which consisted only of Bishops, Abbats, Priors, Earls, and Barons.

...re did meet at a most *general Parliament* ...*London*, the *whole Nobility* of the *whole* ...*ngdom*, that is to say of the *Prelates*, as ...*Abbots* and *Priors*, as *Bishops*; and also ...the *Earls* and *Barons*, that they might ...ent effectually of the unconstant state of the ...ngdom, according to the *urgent necessity* of ...t.

In this very **Parliament** the King confers with the **Bishops** by themselves, the *Earls*, and *Barons* by themselves, about this Business of the **Pope's** not keeping his Promises; and certainly if there had been then any *Commons* in this *Parliament* he would have also conferred with them about the same matter. Ibid 698. n. 40. The King confers with the Bishops apart, and the Earls and Barons apart.

The *Historians words are*, *Convenientibus igitur ad Parliamentum memoratum cæteris regni* **Magnatibus**, *Die videlicet qua cantatur* **Lætare Jerusalem**, *in primis aggressus est Dominus Rex ore proprio Episcopos per se, postea vero* **Comites & Barones**, deinde autem **Abbates & Priores** videlicet *super* his pro quibus miserat Nuntios suos solemnes ad *Concilium Lugdunense*, &c. Ibid. 698. l. 40. A. D. 1246. 30 *Hen.* 3. Ibid.

The result of these Conferences was, that yet for the *reverence* due to the **Apostolic See**, they should again *supplicate* the **Pope** by Letters, to remove the *intollerable grievances* and *importable yoak*. Ibid. f. 699. n. 20.

And this they do according to the *Kings* separate Conferences with them. The **Bishops** write by **themselves**, the **Abbats** and **Priors** by **themselves**, and the **Earls**, **Barons**, &c. by themselves to the *Pope*; and Ibid. n. 30. Ibid. fol. 700. n. 10. Ibid. n. 50.

and if there had been any **Commons** at this day, moſt certainly they would likewiſe have wrote to the *Pope*, as well as the other **conſtituent** parts of this *Parliament* did.

P. 114. There were then very many more Earls than theſe eight here named.

Our Author very cunningly recites the Directions of the laſt Letter only of the Earls and *Barons*, &c. to the *Pope*, *Sanctiſſimo*, &c. *Devoti filii ſui Comes Cornubiæ, Richardus de Monteforti Comes Legreceſtriæ, De Boun & Bohun Comes Herefordiæ & Eſſexiæ R. le Bigod Comes Northfolkiæ R. Comes Glovernie & Herfordiæ. R. Comes Wintoniæ. W. Comes Albemarliæ. H. Comes Oxonienſis, & alii totius Regni Angliæ Barones Proceres & Magnates, & Nobiles Portum Maris Habitatores, nec non & Clerus & Populus Univerſus Salutem*, &c. And takes no notice of the other Letters from the Biſhops, or Abbats and Priors, or thoſe of the King, one to the Pope, * another to the Cardinals upon the ſame ſubject. And then tells us, that *Mat. Paris* calls this a Parliament, truly citing the place of that Author, *fol.* 698. *n.* 40. and but theſe words only, *Convenientibus igitur ad Parliamentum totius regni* **Magnatibus**, and applies them to the words above written, and would have the *body* of the people of *England* included in the **Magnates**. But if he had intended to have dealt candidly with his Readers, he ſhould have let them know there were the **Magnates** *particularized*, and that they were the *very* **Biſhops**, the *very* **Earls**, and **Barons**, the *very* **Abbats** and **Priors**, with whom the *King* had **ſeparate conference**, who jointly agreed every **Order** of them, ſhould

* *Paris ut ſupra*, fol. 701. n. 20, 30.

P. 114. Our Author falſly applies Hiſtory.

Conſtituent Members of that Parliament.

ould, (beſides the *King*) write particular-
to the **Pope** about their *grievances*, as
e have ſaid before.

Nor were theſe **troup of words** here
wn up in this Letter to any other *purpoſe*
n to make an *impreſſion* upon the **Pope**,
d make him ſenſible what a general diſlike
e *Nation* had of his *exactions* and *incroach-*
nts, and to induce him to a *compliance* with
eir *deſires*, the *Multitude* not being any
ays *parties*, or *privy* to the *writing* of the
Letter; for the **clamour** of the people was
a great Argument uſed in all theſe *Letters* to
ſſ the **Pope**, how *Ingrateful* his *impoſiti-*
ns were to the *Nation*. But in this of the
Temporal Barons more eſpecially, who addreſs
themſelves to the **Pope** by *Petition*, *infor-*
ng it by the **Clamour** of the *people*; *implo-*
rant etiam humiliter & devotè quatenus ob ſpem
retributionis divinæ, voces clamantium poſt vos dig-
nemini miſerecorditer exaudire, & gravaminibus,
injuriis & oppreſſionibus **Regno Angliæ**, *&*
Domino noſtro Regi multipliciter impoſitis, ac il-
latis, velitis ſalubre Remedium adhibere, alioquin neceſſe eſt ut veniant Scandala **clamore**
populi *tam Dominum Regem quam* **nos** *in-*
habiter impellente. That is, We humbly and obſequiouſly implore, that for the hope of divine Retribution, you would mercifully vouchſafe to hear the Petition of ſuch as cry after you, that you would apply a wholeſome *Remedy*, to the *grievances*, *injuries* and *oppreſſions*, which are many ways impoſed upon the *Kingdom* of *England*, and our Lord the King, otherwiſe of neceſſity Scandals

The Clamour of the people uſed as an Argument to the Pope, &c.

Paris fol. 702. n. 10.

dals will come, by the **Clamour** of the **People** intollerably urging as well the King, as **our selves**.

Ibid. n. 20.

The King in his Letters to the Pope about this matter, tells him, the *clamour* of the great Men, as well of the *Clergy* as *Laity*, was such as he could not indure to hear it, *Clamorem incomparabilem Magnatum Angliæ, tam Cleri tam Populi non possumus abaudire.*

Note the great Men of *England*, as well Clergy as Laity, were the Kings *Magnates*. Ibid. n. 30.

And in his *Letters* to the *Cardinals* touching the same *affair*, he lets them know, that how great soever his *affection* was toward the *Roman Church*, yet he could not by dissimulation pass by the *clamour* of his *Great Men* of *England* as well of the *Clergy* as *Laity* against the **Popes** *Oppressions*. **Clamorem Magnatum nostrorum** *Angliæ tam Cleri quam* **Populi** *clamantes super Oppressionibus, &c. non possumus, dissimulando pertransire.*

From this *general* **Clamour** of the *People*, and not from their *being* **Parties**, it was that the beginning of the Letter from the **Baronage**, or as 'tis in the *Margin* the **University** of *England* was stuffed with so many *words* and *phrases* to awaken the **Pope**, and incite him to redress the grievances.

Ibid. fol. 700. n. 50.

P. 114.

In the rear of all these, and within the time of the 49 *Hen.* 3. he brings a *Record* to patronize this conceit of his about the **Baronage** of *England*.

Cl. 29 *Hen.* 3. m. 8. dors.

Rex Abbati de Sancto Edmundo Salutem; cum pro oppressionibus innumerabilibus factis in regno nostro per Ecclesiam Romanam ob quam Magnates nostri ad sedem Apostolicam appellarunt & quosdam

endum (a) pro ipſis & *pro* Univerſitate Baronagii *Angliæ ad Concilium in brevi celebrandum, ad Appellationem ſuam proſequendam duxerint deſtinandos.*

This *Record* was a Mandate to the *Abbat* of *Bury*, for reſtraining the Popes Legate, his Clerc Mr. Martin, for gathering any *Papal Subſidies* in his *Juriſdiction*, or collating any perſon to Benefices without the *Kings* knowledge, until the *Meſſengers* ſent by the Baronage to the *Council* of *Lyons* were returned, or ſent anſwer what was to be done. The *Record*, as 'tis found in the Roll, I here tranſcribe it word for word.

A Mandate to the Abbat of *St. Edmunds-Bury*, againſt the oppreſſions of the Church of *Rome*.

Rex Abbati de Sancto Edmundo Salutem; cum pro oppreſſionibus innumerabilibus factis in regno noſtro per Eccleſiam Romanam, *ob quam* Magnates *noſtri ad Sedem Apoſtolicam appellârunt, & quoſdam* de ipſis *pro* Univerſitate *totius* Baronagii *ad Concilium Brevi celebrandum, ad Appellationem ſuam proſequendam duxerint deſtinatos, &c.*

Cl. 29 *Hen.* 3. m. 8. Dorſ.

Note *Magnates de ipſis pro Univerſitate*, not *pro ipſis & Univerſitate*, as our Author hath made it.

Theſe *Nuntii* or *Meſſengers* which were de ipſis, of the Great Men themſelves, I have ſhewn to be *Earls* and *Barons*, (that is to ſay) Earl Roger Bigod, John Fitz-Geofry, William de Cantelupe, Philip Baſſet,

(a) Here he hath mended the Record, and inſtead of de ipſis, as it is in the Record, he hath put pro ipſis, and added the Particle Et immediately after it, which is not in the Record, to ſerve his purpoſe.

and

and **Ralp Fitz-Nicholas**, all four Barons, and if any man that conſiders the *Record* as I have truly related, without his **Alterations** and **Amendments**, cannot but judge the meaning of it to be againſt his **whimſey**.

I ſhall give him two or three *Proofs* more, that the **Commons** of *England*, as now underſtood, could not be a part of the **Univerſity**, or which is more the **Common Univerſity** of *England*, and ſo not part of the **Baronage**, nor were as at this day *repreſented* in *Parliament*.

Fol. 581. n. 20. 30.

Ann. Dom. 1242. (ſaith *Mat. Paris*) on *Tueſday* before the *Purification* of the *V. M.* the *Archbiſhop* of *York*, *and all the Biſhops of* England, *the Abbats*, *and Priors by themſelves*, *or Proxies*, *and alſo all the Earls*, *and almoſt all the Barons of* England *met at* Weſtminſter, by the *Kings* (a) *Writ* to hear his Pleaſure, and the Buſineſs for which they were called, the King ſent to them, *Solennes Nuntios*, **Dictum Dominum Eboracenſem**, & **Dominum Comitem Richardum** & **Dominum Walterum de Eboraco** & **Præpoſitum** *de Beverlaco*, his *Commiſſioners* or *ſolemn Meſſengers*, the ſaid *Archbiſhop*, (b) *Earl Richard*, and *Walter de Eboraco*, *Provoſt* of *Beverley*, to ask their advice, and acquaint them with his intentions. *Tandem dicti Epiſcopi*, *Abbates & Priores Comites & Barones magno inter eos tractatu prahabito Domino Regi per* **prædictos Magnates** *dederunt Conſilium*, &c. At length the ſaid *Biſhops*, *Abbats*, and *Priors*, *Earls*,

(a) See before the Summons to the Archbiſhop of *York*, 26 Hen. 3. to be at *London* 15 days after *Hillary*, which is 28 *Jan.* and was the Summons to this very great Council.

(b) He was the Kings Brother

Earls, and *Barons*, after a great Consultation between them, gave advice to the *King* by the *said great Men*, &c. (which is too long to be inserted here.) *Et cum dicti Magnates nuncii istud Domino Regi nunciassent Responsum, redeuntes ad* Barnagium *dixerunt, Quod in parte sufficiens dederunt Domino Regi Responsum, sed Dominus Rex vult scire*, &c. and when the said Great Men the *Commissioners* or *Messengers*, had Reported that Answer to the *King*, they returned to the Baronage, and told them, That in part they had given the *King* a sufficient answer, but the *King* will know, *&c.*

Ibid. fol. 582. n. 10.

Note this passage.

What clearer proof can there possible be, that all the Bishops of *England*, all the Abbats and Priors, and all the Earls and Barons of *England*, were only the Baronage of *England*. For they were only those that met at *Westminster* by the Kings Writ, they were only those that received the Message from the Kings Commissioners, and consulted about it, they were only those that gave their advice upon that Message, and answer to it, they were only those, and could be no other, which are here called the Baronage, To whom the Great Men the *Kings solemn Messengers* or *Commissioners* returned, after they had reported their answer to the *King*, and told them it was but in part sufficient.

Who and what persons were the Baronage.

Eodem An. (saith the same Historian again) *convenerant Regiâ summonitione convocati* Londinum Magnates *totius Regni*, Archiepiscopi, Episcopi, Abbates, Priores,

Fol. 639. n. 20. A. D. 1244. 28. *Hen.* 3.

Comites, & Barones. *In quo Concilio petiit Rex ore proprio, in præsentiâ* Magnatum, in Refectorio Westmonasterien. *Auxilium sibi fieri pecuniare. Cui fuit Responsum quod super hoc tractarent, recedentesque* Magnates *de Refectorio, convenerant* Archiepiscopi & Episcopi, Abbates & Priores *seorsim per se, superque hoc diligenter tractaturi; Tandem requisiti fuerunt ex parte eorum* Comites & Barones, *si vellent suis Consiliis unanimiter consentire, in Responsione & provisum super his facienda. Qui Responderunt, quod sine* Communi Universitate *nihil facerent, tunc de* communi assensu *electi fuerunt Ex parte* Cleri *Electus Cantuarien sis, Wintonien sis, Lincolnien sis & Wigornien sis Episcopi. Ex parte* Laicorum *Richardus Comes Frater Domini Regis, Comes Bigod, Comes Legr. S. de Monteforti & Comes Mareschallus W. Ex parte vero* Baronum * *Richardus de Munfichet & Johannes de Bailloil, & de Sancto Edmundo & Rameseia* Abbates; *ut quod isti* Duodecim *providerent in* Communi *recitaretur, nec aliqua forma Domino Regi ostenderetur authoritate Duodecim, nisi omnium* Communis assensus *intervenirent.*

Note who were usually and regularly esteemed *Magnates.*

* Two great Barons. See *Dugd. Baronage* Tom. 1.

An. 1244. 28 *Hen.* 3.

In the same year there were called together by the *Kings Summons*, the Great Men of the whole *Kingdom*, the *Arch-Bishops*, *Bishops*, *Abbats*, *Priors*, *Earls*, and *Barons*. In which *Council* the *King* by his own Mouth, in the presence of the Great Men, in the *Refectory* at *Westminster*, desired a Pecuniary Aid; to whom it was answered, that they would treat about that

that matter; and the **Great Men** retiring out of the *Refectory*, the *Arch-Bishops*, *Bishops*, *Abbats*, and *Priors*, met and treated by themselves. At length the *Earls* and *Barons* were asked, if they would *unanimously consent* to the **Resolutions** they had taken in **answering** and making **provision** for what had been demanded of them; who answered, That without the **Common University** they would do nothing. Then by *Common assent* there were elected on **behalf** of the **Clergy**, the *Elect* of *Canterbury*, the *Bishops* of *Lincolne*, *Winchester*, and *Worcester*; **on behalf** of the **Laity** *Earl Richard* the *Kings Brother*, *Earl Bigod*, *Earl* of *Leycester*, *Simon Montfort*, and *Earl William Marshall*; **for** the **Barons**, *Richard Montfichet*, and *John Baliol*, and the *Abbats* of *Bury*, and *Ramsey*, that what they twelve should resolve on, should be recited in *Common*; and that no form should be shewn to the *King* by *Authority* of the twelve, which had not the **Common** *assent* of all.

The Common University.

In this *Parliament* the several *orders* of men that were the **constituent parts** of it, were only the **Bishops**, **Abbats**, and **Priors**, the **Earls** and **Barons**, and *all these* put together, were termed the **Common University**, which is more comprehensive than *University* simply taken. If the **Commons** as at this day represented, had been there, we must have had some mention of them one way or other, or of a **Committee** of them, as well as of the **Committees** of the *other Orders*, which made up the *general* **Committee** of *twelve*, for it is **plain** here be-

The Commons not comprehended in the Common University.

yond doubt, that they were not comprehended in the **Common University**.

Fol. 981. n. 50.

The same Author reports, that *An. Dom.* 1259. *fuit Rex Henricus ad* **Natale** *Domini Londini, ubi magna sollicitudine tractatum est inter* **nobiles** *Regni.* King *Henry* was at *Christmass* at *London*, where the **Noblemen** of the **Kingdom** treated with great solicitude, how keeping to their resolution they might satisfie the desire of *Richard King* of *Almaine*, which was very great and earnest to come into *England*.

The Noblemen of the Kingdom with the King at *Christmass*.

Ibid. fol. 682. n. 50. Feast of St. *Hilary*, Jan. 13.

A little afterwards the same persons, *Circa festum Sancti Hillarii habito* **Concilio communi** *& deliberatione diligenti super adventu* **Regis Almannie** *Richardi in Angliam* **Nuntios solemnes** *in Occursum suum destinarunt, videlicet* **Episcopum Wigorniensem, Abbatem** *Sancti* **Edmundi, Petrum de Subaudia, Johannem Mansell**; *ut Idem Rex ipsos certificaret de causâ adventûs tam subiti tamque inopinati, & de morâ suâ in Angliâ.* **Comes** *autem* **Legnie Simon**, *non sine multorum admiratione, in partibus adhuc transmarinis morabitur, unde in magnâ parte fuit* **Concilium Baronagii** *mutilatum.* That is, about the Feast of St. *Hilary*, upon a *Common Consult*, and great deliberation, concerning the coming of *Richard King* of *Almaine* into *England*, they sent *Messengers* or *Ambassadors* to meet him. That is to say, the *Bishop* of *Worcester*, the *Abbat* of *St. Edmundsbury*, (a) *Peter* of *Savoy*, (b) and *John Mansell*, to expostulate the cause of his so sudden and unexpected coming, and to understand

The Council of the Baronage, what it was.

(a) *Peter* of *Savoy* was the Queens Uncle, and Earl of *Richmond*. *Paris* fol. 559. n. 30.

(b) *John Mansell* was the Kings Clerk, Chancellor of St. *Paul's*, and his principal Councellor. *Par* fol. 616. n. 40. 859. n. 30.

derſtand how long he would ſtay. But *Simon* **Earl** of *Leyceſter*, to the admiration of many, ſtayed yet beyond Sea; by which means the **Council** of the **Baronage** was not complete.

And of theſe very **Ambaſſadors** or **Solemn Meſſengers** *it was*, that the *Hiſtorian* ſays, *Nuntiis ſolemnibus a* **Communitate Angliæ deſtinatis** *Ipſe Rex Alemanniæ, nimis torvo vultu & verbis minacibus Reſpondet*, &c. The *King* of *Almaine* anſwered the **Meſſengers** or **Commiſsioners** ſent by the **Community** of **England** with a ſtern countenance, and threatning words, *&c.* Ibid. fol. 983 n. 30.

By theſe paſſages it is very clear and evident, that the **Noblemen** of *England*, and **Council** of the **Baronage**, were the **Community** of **England**. For the **perſons** that met at *London*, and **treated** about this **Caſe**, and **choſe** and **ſent** the **four Meſſengers**, were the **Noblemen** of *England*, and the **Council** of the **Baronage**; and yet it is ſaid theſe very Meſſengers were ſent from the **Community** of **England**; ſo that the **Univerſity** of the **Baronage**, the **Community** of **England**, and **Common Univerſity**, did ſignifie the ſame thing, and were ſometimes taken for a **great appearance** of the **Lay-Nobility** only, ſometimes for all the **Orders** of the **Nobility** put together. The Noblemen the Community of *England*. *Paris ut ſupra.*

And further the **Communitas Angliæ** in this very place is called or explained by **Nobiles Angliæ**, & **Barones Angliæ**, the *Noblemen* or *Barons* of *England* no leſs Ibid.

than four times within less than forty Lines next following upon the same side of the Leaf.

To this may be added that our Author hath very ill luck that there cannot be found any one Commoner as at this day understood, that was a Commissioner or Messenger imployed in any publick busines mentioned in, or that was a Witness or Party to any of the *Records*, *Publick Letters* or *Instruments* he hath cited.

P. 115. He produceth two instances more, in the Reigns of *Edward* I. and *Edward* III. to shew that Parliaments since *Henry* III. have sent Letters to the Pope, when he attempted to invade the Rights of the *Crown*. But these I pass by, being beside the Controversie, and beyond the time limited for the decision of it; seeing it is without doubt, that then the Commons were a Third Estate, as at this day, or as he calls them, an *Essential* or *constituent* part of the Parliament, yet doubt not but if it were any thing to the purpose, to make it appear, that the whole Community of the *Kingdom* of *England*, for which the Barons there named set to their *Seals*, to that *Letter* directed to the Pope, 12 *Febr.* 29 *Edw.* I. 1300, at Lincoln, were the Community of Barons only. There being at that time many *Earls* and *Barons* whose Seals are not put to that Instrument.

I will conclude this Answer to his third Observation with the same words (as near as I can) our Author concludeth the Observation it self. Certainly

Certainly the *difference* and great *variety* of *words* and *phraſes*, by which both the antient *Hiſtorians* and *Records*, have in their ſeveral ages and times expreſſed and denoted the *Communia Concilia Regni*, or **Parliaments**, and their conſtituent parts being not well obſerved and conſidered by our *late Author* (who underſtands them as if they ſignified what the word *Parliament* now doth) hath endeavour'd to impoſe upon our *Hiſtorical Faith*, and propagate to poſterity many *palpable* and **groſs** *Errors*, from whence great and unkind *claſhings*, and *diverſities* of *Opinions* amongſt men may have their *ſourſe* and *ſpring*, nay even between *Prince* and *People*. P. 121, 122.

The Hiſtorical Faith of the People abuſed by the Author.

The Appendix *consider'd.*

Page 129. IN this *Appendix* he endeavors to clear a material Objection, as he says *offered* him by some *Friends*, which is, That the **Commons**, or People of *England*, were from the time of the **Norman** *Conquest*, represented by such as held of the *King* in *Capite*, until the 49 of *Henry* 3. and then by two *Knights* for each County, and certain *Burgesses* for several *Burghs*, and *Barons* for the *Cinq-Ports*.

'Tis probable the Commons were not at all represented before 49 *H.*3.

For my part I cannot see how this comes to be an Objection, if the *Commons*, as now understood, were not at all represented (as for ought I can find, I think they were not.)

Page 1,2,3, & 74. He hath undertaken to prove, that the **Commons** of *England* were represented by *Knights*, *Cittizens* and *Burgesses*, Elected and sent by those they represent, and that the **Commons**, or *Freemen* of *England*, as now called, and distinguished from the *Lords*, were an *Essential* and *Constituent* part of Great *Councils* and *Parliaments*, during the *Brittish*, *Saxon*, and *Norman Governments*, which, if he had done, he need not have heeded what had been said about their being represented by *Tenents* in *Capite*, nor can he ever prove they were represented the same

same way he affirms, by disproving, they were represented by the *Tenents* in *Capite*.

But this was not so much intended for an *Objection*, as to Usher in an Opinion, and Conceit of his own (which may be of very dangerous Consequence to the *Nation* and *Government*:) that there antiently were **Barones Regis**, and **Barones Regni**, and so *milites* & *libere Tenentes* de *Rege*, & *Milites* & *Libere Tenentes* de *Regno*; a sort of **Barons Milites**, and *Free Tenents* certainly he means (or nothing) that were *sui juris*, and had no dependency upon the *Government*.

The Authors Conceit of *Barones Regis*, & *Barones Regni*. p. 130.

First, To make this *Fancy* plausible, he tells us, that the Antient *Chronicles* of the *Kingdom*, say, that both before and after the *Conquest*, the *Kings* of *England* held their *Court* three times in every year, at *Easter*, *Whitsuntide*, and *Christmass*; And then the *Crown* was attended with most of those *qui de Rege tenuerunt in Capite*, which held of the *King* in Chief. This was called *Curia Regis*, the Kings Court, where matter of right between the *Kings Tenents* was determined. But, under favour (saith our Author) this was not the *Commune Concilium*, or *Parliament*, as we now call it. But when they, or Contemporary *Historians* take notice of the meeting of the *Commune Concilium Regni*, or *Parliament*, then their Expressions alter, and say, that *Rex ascivit*, Ordericus Vitalis, fol. 680. *Ex precepto Regis convenerunt*,

Page 131.

His Pretence for that Fancy.

runt, Eadmerus. *Rex Sanctione ſua adunavit.* Flor. Wigorn. and many ſuch like Expreſſions, which ſhew, it was not held to **more**, of Cuſtom; yet true it is, *Kings* did often *Convene*, or *Summon* the *Common-Council* of the Kingdom at one of the ſaid Feaſts, being a *great Conveniency to the Tenents in Capite.*

It is a Precarious Whimſey.

The **whole**, as he hath delivered it, is **precarious**, and he cannot evince the truth of it from any good Authority; And the contrary to it, that is, that the **Barones Regis & Regni**, were the ſame perſons; and that uſually the **Barons**, of what quality ſoever, did repair to the *Kings Court* at **Chriſtmaſs**, **Eaſter**, and **Whitſunday**, doth appear to have been the *Cuſtome* of thoſe times he ſpeaks of, from theſe *Teſtimonies* of *Antient Hiſtorians.*

Ingulph. fol. 501. b. n. 30, 40.

In a *Chirograph*, or *Chart* of Confirmation of the Lands to *Croyland Abby*, by King *Edgar. Sancitum eſt hoc in Anno Dominicæ Incarnationis* 966 *præſentibus Archiepiſcopis, Epiſcopis Abbatibus, & Optimatibus* **Regni mei** *ſubnotatis*; This was done in the year of our Lords Incarnation *966*, in the preſence of the Arch-Biſhops, Biſhops, Abbats, and Chief Men of my Kingdom undernoted; And then, after the King, in the Subſcription, follows the Arch-Biſhops, Biſhops, Abbats, Dukes, and Thanes. And in the ſame year King *Edgar* confirmed the Priviledges of that *Abby* by **Charter**; *Privilegium illud*

Ibidem, fol. 502. a. n. 30, 40.

Sancitum est in presentiâ Regis Edgari Prelatorum **Procerumque Suorum**, *Anno Dominicæ Incarnationis* 966; *apud London Collectorum.* That Priviledge, or Charter of Priviledges was confirmed in the presence of *King Edgar*, his *Prelates*, and *Noblemen* met at *London*, in the year of our Lord 966. And then after the King, in the Subscription, the same persons follow, and in this *Chart* are called **His Prelates**, and **Noblemen**, which in the former *Chart* were called, the *Bishops, Abbats, and Chief Men* of **His Kingdom**.

Celebratum est Concilium in Ecclesiâ Beati Petri in occidentali parte juxta Londoniam sita communi consensu Episcoporum Abbatum & Principum **totius Regni** *& huic conventui affuerunt* **Primates regni utriusque Ordinis**. There was a *Council* celebrated at *Westminster*, by the Common consent, of the *Bishops*, *Abbats*, and *Princes* of the *Kingdom*, and at this Meeting were present the **Prime Men** of the *Kingdom* of **both Orders**. In this *Council* the **Bishops** and **Barons** are called the *principal men* of the *Kingdom*, yet were the **Kings Barons**, they all held of him *in Capite*; and so did the *Temporal Chief Men* of the *Kingdom*. Eadmer, fol. 67. n. 20.

In *Mid-Lent Hen.* 1. in the Third of His Reign went to *Canterbury*, to prevail with the *Arch-Bishop Anselme* to desist from maintaining the **Popes** *Usurpations* upon the Rights Ibidem, fol. 69. n. 40. Anno Domini 1102.

Rights of the *Crown*, which His Predeceſſors had always enjoyed, and to urge him to undertake a Voyage to *Rome*, and to endeavour to obtain from the **Pope**, that he ſhould quietly enjoy what were his *Anceſtors* Rights. The *Arch-Biſhop* deſired the further Conſideration of this Matter might be deferred until **Eaſter**, that he might make his *Anſwer* according to the *Advice* of the **Biſhops** and **Chief Men** of the **Kingdom**. *Igitur in* **Paſcha** *curiam venit*, **Communis Concilii** *vocem unam accepit, æquum ſcilicet fore illum tantæ rei gratiâ viæ labores debere, non ſubterfugere.* He came therefore to Court at **Eaſter**, and received the Unanimous Vote of the **Common Council**, that in ſo great a matter it was not fit for him to wave the Journey, though troubleſome. What **Common Council** was this of the *Biſhops* and *Chief Men* of the *Kingdom* that *Anſelm* referred himſelf in Mid-Lent to be held at **Eaſter**? Was it not **ex more**, by Cuſtom, he cannot find in *Eadmer* any *Summons* to it, neither *Rex aſcivit, præcepto Regis convenerunt*, nor *Rex Sanctione ſuâ adunavit.*

Anno Dom. 1103.

Ibidem, fol. 90. p. 30.

Again, *adunatis*, without either (*præcepto Regis*, or *Sanctione*) *ad Curiam ejus in* **Paſcha Terræ Principibus**; the *Princes* or *Chief Men* of the **Nation** met at his Court at **Eaſter**.

And Note, there were **regni Epiſcopi** as well as **regni Barones & Principes**;

if they signified any more, then other Bishops, or if any distinction could, or ought to be made by that Term. *Cepit Anselmus cum Rege* **regnique Episcopis**, *atque Principibus exigere à Gerardo Archiepiscopo Eboracensi professionem de suâ obedientiâ*, &c. *Anselm* began to exact before the *King* and **Bishops** of the **Kingdom** and *Princes*, or Chief Men, the profession of Obedience from *Gerrard Arch-Bishop* of *York*. Ibidem, fol. 91. n. 40.

In another place *adunatis* (without either *Præcepto*, or *Sanctione Regis*) *ad curiam suam in* **Solemnitate Pentecostes** *apud Lundonias* **Cunctis Majoribus Regni**. All the *Great Men* of the *Kingdom* met at the *Kings Court* at *London* in the *Solemnity* of *Pentecost*. Ibidem, fol. 94. n. 50.

Further, *In Festivitate* **Pentecostes** *Rex Hen. Curiam suam Londoniæ in magna mundi gloriâ celebravit & diviti apparatu, qui transactis Coronæ suæ festivioribus diebus, cepit agere cum* **Episcopis & regni Principibus**, &c. Ibidem, fol. 102. n. 50.

In the *Feast* of **Pentecost** *King Henry* held a splendid *Court* in great worldly glory at *London*, who when the dayes of Feasting were past, began to Treat with the *Bishops* and **Great Men** of the **Kingdom**.

Yet further, the same Author, *In subsequente* **Nativitate** *Domini Christi* **Regnum** *Angliæ* Ibidem, fol. 105. lin. 3.

Angliæ ad Curiam Regis Lundoniæ pro more *convenit, & magna* Solemnitas *hoc est atque ſublimis.* In the ſubſequent Nativity of our Lord Chriſt, the Kingdom of *England* according to Cuſtom, met at the *Kings Court* at *London*, and there was a great and high Solemnity. This Inſtance is full in *all points*. Here was the Kingdom of *England*, that is the Baronage or Univerſity of *England* (for, as was noted before out of *Bracton*, the Kingdom conſiſted of *Earldoms* and *Baronies*) who met, according to Cuſtom, at the *Kings Court*. And hence 'tis manifeſt, that at thoſe times the Common Council of the Kingdom was held; from this alſo, and from the former Inſtances, 'tis moſt evident, that the Barones, Principes, Optimates, & Majores Regni, did, at thoſe three *Great Feaſts*, pro more, according to Cuſtom, Frequent the *Kings Court*.

It was the Cuſtom in *Germany* and *France*, to hold Great Councils at thoſe times, and therefore the Antient Hiſtorians tells us, where the Emperors and Kings of *France* always were at *Chriſtmaſs*, *Eaſter*, and *Whitſunday*.

Fol. 658. n. 40. *Mat. Paris* likewiſe ſayes, *In die* Pentecoſtes *Dominus Rex Anglorum Londini feſtum*

Fol. 659. li. 1. *tenens magnum & ſereniſſimum*, Tunc *compoſitâ per Regni* Univerſitatem *Eleganti Epiſtolâ*, &c. In the day of Pentecoſt the *King* of *England* kept a moſt ſplendid *Feaſt* at *London*, then there was an *Elegant Epiſtle* compoſed by the Univerſity of *England*, &c. This was about the Popes Exactions, as hath been before delivered; and *Henry* 3. in his Letter to the Pope, calls the ſame perſons, Magnates *Angliæ*, which in his *Letter* to the *Cardinals*, about the ſame matter, he calls Magnates Noſtri, as the

Magnates Angliæ & Magnates Noſtri, the Kings Great Men the ſame Perſons.

Reader

Reader may ſee in the former citation of them.

Perhaps it will be Anſwered, That he hath *anticipated* and *evaded* all this, by ſaying, It is true, *Kings* did often *Convene*, or *Summon* the *Common Council* of the *Kingdom* at one of the ſaid *Feaſts*, being a great conveniency to the Tenents in Capite; **It may be**, upon *extraordinary buſineſs*, it might be ſo, when the **Occaſion** was *great*, and he deſired a *great* and full *Appearance*, they might receive *Summons* at thoſe times. But then I muſt deſire him to ſhew us the Summons to any of theſe Common Councils, which when called at other times, are moſt conſtantly mentioned in this Author, and I muſt know of him what he will ſay to that **pro more convenit** which is ſpoken of the moſt **General Council**, when the **Kingdom** of *England* met at the *Kings Court*. Page 131.

But it was, he ſayes, a *great Conveniency* to the *Tenents* in *Capite*, to have theſe *Common Councils* then appointed, as if there were **Earls** and **Barons** then in *England* that did not hold their *Earldoms* and *Baronies*, and Eſtates in *Capite*. He grants, that *Tenents* in *Capite* were the **Kings Barons, Milites, Magnates**, &c. Upon this we will *Joyn Iſſue*. And I do affirm (without bringing Proofs, which are infinite in this Caſe) that all the *Biſhops*, *Earls*, and *Barons* of *England*, did hold their *Lands*, *Earldoms*, and *Baronies*, of the *Crown*, or which is all one, of the *King*, as of his *Perſon*, and that was in *Capite*.

All the Biſhops Earls, and Barons of *England* were Tenents in Capite.

William

Domesday-Book in every County.

William the *Conqueror* divided all the Lands in *England* amongst his great followers, to hold of him, he made **Earls**, and **Barons** such as he pleased; They, and their *Descendants* held upon the *Terms* of the first Grant; which was, to find so many *Horse* and *Armes*, and do such, and such *Services*: both *Titles*, and *Lands* were *forfeitable*, and for *Treason* or *Felony* they did *forfeit* them to the *King*, or for want of Heirs they *Escheated* to him; and for these *Lands* and *Tole* they *Sware* **Fealty** to the *King*, and did him **Homage**, and became his Men from that day forward of **Life** and **Limb**, &c. and every **Bishop**, **Earl** and **Baron** of *England* was in these *circumstances*, and held of the *King* after this manner.

The Barons Lands were Forfeitable, and escheated to the King.

They did Homage, and Sware Fealty to the King.

And who ever held of the *Tenents in Capite*, by Mean Tenure in Military Service, held of those *Barons*, or *Tenents in Capite* by the same, or the like *Tenure* that themselves held of the King; and these **Sub-feudataries**, or *Sub-alterne Feudataries* (as the *Feudists* call them) the King antiently might take any of them to his Service, if he would, and also distrein in their Fees for his Services, if the *Lord Paramount* performed them not, yea, and upon the Villain or other Lands that held of him. We never had any *Baronies* held by mean *Tenures* here in *England*; this, if he denies, he must deny all History, and all our Antient Law, and Law-Books; and if he grants it, he must confess that every *Baron was a Tenent in Capite*, and by

Sub-feudataries. *Gerv. Tilb.* lib. 2. c. 4.

Ibidem, c. 15.

by his own conceſſion he muſt then be the *Kings Baron*, or Baro Regis. And further, I deſire this Gentleman to ſhew in his next, if he can, where there was ever any ſuch kind of Tenure, as *Tenura de Regno*: Whether there was ever any Man that held an Eſtate *de Regno*? Whether Forfeitures, or Eſcheats were to the *Kingdom*? And whether Fealty was ſworn, or Homage done to the *Kingdom*? Or whether an Earl was Inveſted, or Girt with the *Sword* of the *County* by the *Kingdom*, or whether the Antient *Ceremonies* uſed at the *Creations* of *Earls* and *Barons* were done by the *Kingdom*. Thus all the Barons of *England* held of the King, and thus all theſe things were performed and done to our *Antient Kings*, and by them, which are moſt manifeſt Notes of the *Kings Juriſdiction* over the *Barons*, and that they were his *Tenents in Capite*, and by conſequence his *Barons*, which our Author will not deny; of which *Tenents in Capite*, the *Earls*, and Great *Barons* always Created by *Inveſtiture* of *Robes*, or other *Ceremonies*, were ſummoned by particular Writs, and the other *Tenents in Capite* ever ſince the 17 of K. *John* were ſummoned by one Common Writ, directed to the Sheriff of the County.

No ſuch thing as *Tenura de Regno*.

Tenents in Capite the Kings Barons.

See *Glossar.* in the words Knights Fees, *&c.* Most of the Lands in *England* in the possession of Tenents in Capite.

And of these *Tenents in Capite*, the greatest part of the Lands in *England* were holden by *Sub-Tenents* in *Military Service*; But upon any Warlike Expedition, the King only summoned such as held of him *in Capite*, to do him Service with Horse and Arms, according to the number of Fees they held immediately of him, to whom, if they served in person, and performed their whole Service by *Servientes*, whether *Menial Servants*, or *Stipendiary Horse-men*, (and either out of gain would not call, or out of favour spared their Tenents) (a) the King alone, by his Prerogative, and by virtue of his Original Grant of Fees, granted them Warrants to receive *Scutage*, and *Ayd* of all their Tenents proportionable to the time they had been in the Kings Service, sometimes half a Mark, sometimes Ten Shillings, sometimes one Mark, sometimes two, or three Marks, *&c.* So that they were immediately accountable to the King, for the Fees they held of him, and their Tenents to them for their Fees they held of them. Yet in all their Oaths of Fealty to the mean Lords their Tenents *Allegiance* and *Service* to the *King* was always saved.

(a) *Clauf.* 16. *Johannis*, m. 24. *Dorf. Clauf.* 5. *Hen.* 3. *Dorf. Clauf.* 7. *Hen.* 3. m. 4. *Dorf. Mat. Paris*, fol. 322. li. 8.

The King by His Prerogative granted Ibidem.

Scutage and Ayd to his Tenents in Capite.

See the Oaths themselves.

I have

I have said enough, I hope, to satisfie any quiet sober Man of the *Idleness* of our Authors *Fancy*, concerning Barones Regis & Regni, which were the same Persons.

From this *Aery Ambuscade* of Barones Regis & Regni, he retreats to his old Notion, and proceeds to shew, that the *Milites Tenentes qui de Rege tenuerunt in Capite*, together with the other *Great Lords* that held of the King, were not the *Partes constituentes*, and alone did compose and make up, the *Totum*, the whole *Body* of the *Generale*, or *Commune Concilium Regni*, or *Parliament*, and begins with a *Statute*, or *Act* of *Parliament* made in the time of *Richard* the First; The *Assise* (saith he) or *Statute*, being made *per Assensum & Concilium, Archiepiscoporum, & Episcoporum, & Abbatum, Comitum & Baronum, Militum & Liberæ Tenentium totius Regni*. He hath added these three words, *Et Liberæ Tenentium*, after the word *Militum*, they are not to be found in *Hoveden*, whom he cites in the *Margin*, but conceals the *Folio*, and *Number*. 'Tis Natural to him,

Page 132.

Ibidem.

Hoveden, fol. 445. b. n. 40.

Ibidem.

Our Author Adds to Hovedens words.

him, he cannot give over, adding to, or leaving out of *Records* and *Histories* what he judgeth makes for his purpose.

What the *Historian* delivers in short, is this:

Ibidem. After he hath enumerated the *Articles* of the ordinary *Pleas* of the *Crown*, he mentions the *Forest Pleas*, and says, *Præceptum est, ex parte Regis ut convenirent coram iis* (the Justices of the Forest which he there names) *per singulos Comitatus per quos iturî essent ad Placita Forestæ*, Archiepiscopi, Episcopi, Comites & Barones, & omnes Liberi Tenentes, & de unaquâque villâ præpositus, & Quatuor Homines *ad audienda præcepta Regis.*

That is, it is commanded by the King, that in every County through which his *Justices* of the *Forest* should go, the *Archbishops*, *Bishops*, *Earls* and *Barons*, and all *Free-Tenents*, and of every Town the *Chief Officer*, and four others, should appear before them, to hear the Kings COMMANDS. And then immediately follows the Assise or Forest Laws, with

Hoveden, ut supra.

this

this preamble, which our Author cites in part with his own Addition of (& libere Tenentium) after Militum. Hec eſt aſſiza Domini Regis, & hec ſunt precepta de Foreſtis ſuis in Anglia facta per aſſensum & Conſilium Archiepiſcoporum, Epiſcoporum, & Abbatum, Comitum & Baronum, & Militum totius Regni. This is the Aſſize of the *Lord* the *King*, and theſe the Precepts concerning his Foreſts in *England*, made by the *Aſſent* and *Advice* of the *Arch-Biſhops*, *Biſhops*, *Earls*, *Barons*, and *Milites* of the whole *Kingdom*; Not a word of any Free Tenents in the *Hiſtorian*, which he hath here foiſted in. But, Why did he not alſo bring in the Chief Officers, and the ſmall other Men in every *Town*, as *Conſenters* to, and *adviſers* in the making this Law? it would have fitted his *Conceit* better. For it ſeems to me he is not *ſatisfy'd* to have all the Freeholders in *General*, as he *tranſlates* Libere Tenentes, Meaning our *Ordinary Free-holders*, as at this day, to be Eſſential and Conſtituent parts of the Parliament, but would bring in *Tag*, *Rag*, and *Long Tayl*, the whole *Rabble* to be *Law-Makers*; And to make good this *Giddy Notion*, he makes uſe of the word *fideles* in two ſeveral *Records*. *Rot. Pat. 6 Johannis, m. 2. dorſ. & Rot. Pat. 8, 9. Johannis, n. 3.* & omnes de Regno *qui dederunt Regi Quintam Decimam*, &c. *in the laſt Chapter of* Magna Charta, where he would have fideles & omnes *de* Regno ſignifie all *Subjects* in general.

He is truly cited.

Milites here were Tenents in Capite, and no others: See Knights-Fees and Milites in the Gloſſary.

Our Author makes all the Men of *England* Members of Parliament. p. 133, 134.

p. 138.

Par. 6 Johannis, m 2. Dorſ.

Page 133. Fideles in this Record, Tenents in Capite.

As for the word *fideles* in the firſt *Record*, it is evident, they were the *Kings Tenents in Capite* only. *Rex*, &c. *Vicecom. Rotel*, &c. *Scias quod proviſum eſt Communi aſſenſu Archiepiſcoporum, Epiſcoporum, Comitum, Baronum & omnium fidelium noſtrorum Angliæ Quod* **Novem Milites** *per totam Angliam invenirent decimum* **Militem** *bene paratum Equis & Armis ad defenſionem Regni noſtri, & quod illi* **Novem Milites** *invenient* **Decimo Militi** *quâlibet die iis ad Liberationem ſuam; & ideo tibi præcipimus quod ſicut teipſum & omnia tua diligis, provideas quod* **decim Milites** *de Balivâ tuâ ſint apud* **London** *a die Paſchæ in tres ſeptimanas bene parati Equis & Armis*, &c. That is, the King to the *Sheriff* of *Roteland*, &c. Know, that it hath been provided by the *Common Aſſent* of the *Arch-Biſhops*, *Biſhops*, *Earls*, *Barons*, and all our *fideles*, or *Tenentes in Capite*, that *Nine* Knights through all *England* ſhould find a *Tenth*, well provided with *Horſe* and *Armes* for the defence of our Kingdom, and that thoſe *Nine* ſhall find the *Tenth Knight* every day **two ſhillings** for his *Pay* and *Wages*, and therefore we *Command* the, *&c.*

What could theſe *fideles Anglia* be but *Tenents in Capite?* What had other Men to do to give aſſent to this Law, that were not concerned in it, nor could be? The **Nine Knights** alſo that were to find a **Tenth** were *Tenents in Capite*, and the *Tenth* alſo, for they

they would never have allowed ſo great pay to an *ordinary Miles* (Horſeman) or *Tenent in Military Service*. **Two ſhillings** a day in the 6th of King *John*, *Anno Dom.* 1205, 465 years ſince, is at leaſt **Thirty Shillings** a day now; And therefore he that had this *allowance*, went forth in a good *Equipage*, and maintained (without doubt) ſeveral *Soldiers*, *Servientes*, or *Eſquires* with it, and was a *Tenent in Capite*.

'Tis moſt probable likewiſe, that the *fideles* mentioned in the other *Record* about **Romeſcot**, were *Tenents in Capite*. He only recites theſe words of it, *Univerſitas Comitum, Baronum Militum & aliorum fidelium*, in the *Record*, **Fidelium noſtrorum**; But the *Difficulty* in this *Record* is, that the **alii-que fideles** follow *Comites*, *Barones*, & *Milites*, and therefore they were the *Kings Ordinary Subjects*, or other *Ordinary Free Tenents*, and not *Tenents in Capite*. But *Mat. Paris* expounds the **alique fideles**, and helps us out of this difficulty. *Pat.* 8, 9 *Johannis*, n. 3.

Imminentibus autem & inſtantibus Calendis Julii (ſaith he) *Rex Angliæ per Literas ſuas ſtrictiſſimè ſubmonitis & convocatis omnibus Comitibus, Baronibus, Militibus & aliis qui ei Servitium Militare debebant, ut ſe convenienter in Walliam profecturi ſequerentur.* *Paris*, fol. 660. n. 20. An. Dom. 1245. *Hen.* 3. 29.

The *King* of *England*, on the firſt of *July*, by his Letters, ſtreightly ſummoned, and

called together, all the *Earls*, *Barons*, and *Knights*, and **others**, that ought *him Military Service*, that they might follow him, being about to March into *Wales*. Here we find **others** that ought the *King Military Service*, and so were *Tenents in Capite*, besides *Earls*, *Barons*, and *Knights*, the place is plain, and needs no further Exposition.

Besides the **Universitas** *Comitum*, *Baronum*, *Militum*, & *aliorum* **fidelium nostrorum** in this Record, were the same persons mentioned in the Record immediately before this, *Pat.* 8, 9. *Johannis*, *n.* 2. which were the **Archiepiscopi, Episcopi, Abbates, Priores, & Magnates** *Regni*; *The Arch-Bishops, Bishops, Abbats, Priors*, and *great Men*, who gave the *King* an *Ayd*, &c. And who the **Magnates** were, *Mat. Paris* also informs us. *Convenerunt Londini* **Magnates** *totius Regni, Archiepiscopi, Episcopi, Abbates, Priores, Comites & Barones, in quo Concilio Rex*, &c. The *Great* **Men** of the *whole Kingdom* met at *London*, the *Arch-Bishops, Bishops, Abbats, Priors, Earls* and *Barons*, in which Council, the *King*, &c.

Fol. 693. n. 20.

Note, who the Magnates totius Regni.

But though this is clear to any unprejudiced person, yet I must be forced to recite the whole *Record*, though somewhat long, for he gives us a *touch* of his *old skill*, and **Misinforms** his *Readers* about the meaning of some part of it.

Page 134. 135.

He sayes, the **Universitas** *Comitum, Baronum, Militum, & aliorum fidelium* complain against the Clergy about **Romescot**,

whereupon

whereupon the King granted his *Prohibition* or *Supersedeas* to the Clergy, that they should do nothing therein. *Quousque cum* **Universitate** (before-mentioned) *super hoc Colloquium habemus*; These are his own words, and by this last Clause he would possess his Readers, that the **University**, with which the King would have *Conference*, was the **University** of the *Earls*, *Barons*, *Knights*, and others his *Fideles*. But it is far otherwise, for the words in the Prohibition are, *quousque cum* **Universitate vestra** *super hoc colloquium habuimus*; it being directed to the *Arch-Bishops*, *Bishops*, *Abbats*, *Arch-Deacons*, and all the *Clergy*, and it was *cum* **Universitate vestra**, or with the **University** of the *Clergy* (which often occurs in *Paris* and other *Historians*) that he would *habere colloquium*. The *Record* will make his mistake evident, and for the matter it contains, is not altogether unworthy perusal.

Our Author misinforms his Readers. P. 135.

Rex **Archiepiscopis**, **Episcopis**, **Abbatibus**, **Archidiaconis** & *omni* **Clero** *apud* **Sanctum Albanum** *convocato salutem*, *conquerente* **universitate** *Comitum*, *Baronum*, *Militum*, & *aliorum*, **fidelium nostrorum** *audivimus*, *quod non solum in Laicorum gravem perniciem*, *sed etiam in totius regni nostri intolerabile dispendium super* **Romscotta** *præter consuetudinem solvendo & aliis pluribus inconsuetis exactionibus autoritate summi Pontificis consilium inire & concilium celebrare decrevistis. Nos vero licet ob honorem fidei nostræ & debi-*

Pat. 8 & 9. Johannis n. 3.

tum

tum Reverentia quod ſanctæ Eccleſiæ Romanæ *impendere tenemur, voluntatem ejuſdem patris noſtri* Domini Papæ Innocen. *obtemperare cupiamus, tamen omittere non poſſumus quin querel. fidelium & ſubditorum noſtrorum clamantium & de jacturâ ſuâ ſibi prout neceſſe eſt ſubveniamus, & emergentibus cauſis qua indemnitati pacis & unitatis regni noſtri obviare poſſunt, qua decet celeritate & diligentiâ occurramus; Vobis igitur præciſe mandamus & expreſſe prohibemus ne ſuper prædictis vel aliquibus aliis concilium aliquod autoritate aliquâ in fide qua nobis tenemini teneatis vel contra regni noſtri conſuetudinem aliquod novum ſtatuatis. Sed ſicut & nos honorem noſtrum & communem regni tranquillitatem diligitis, à celebratione hujuſmodi concilii & a prædictis tractatibus ad præſens ſuperſedeatis quouſque cum* univerſitate veſtra *ſuper hoc colloquium habuimus, Scientes pro certo quod expediet honori* Sanctæ Romanæ *Eccleſiæ &* Domino Papæ *& nobis & vobis quod iſtud ad præſens negotium differatur donec ſpecialem habuimus conferentiam quomodo poſſit commodiùs & honeſtiùs explicari. Et quod vobis hoc mandamus pro honore & commodo ſacroſanctæ Eccleſiæ & noſtro & regni id facimus, Quia talia audivimus quod fieri neceſſario expediet, ſicut vobis dicemus cum vobiſcum locuti fuerimus. T. me ipſo apud Ebor. 26. die Maij.*

The King forbids the Clergy, that they hold not a Council by the Popes Authority.

After he hath played with the word *Fideles* in theſe two *Records*, he proceeds to the Omnes *de* Regno *in Magnâ Chartâ* in *Pulton's Statutes*, chap. 37. In *Coke's* ſecond *Inſtitutes*

Statutes, chap. 38. This *Charter* is not upon *Record* in the 9th of *Henry* III. the year it was granted; nor do I believe it is entered any other where until the 21 *Edw.* I. 68 years after upon the *Statute Roll* by *Inſpeximus*, The words about the meaning whereof we differ P. 138. are theſe, *pro hâc autem Donatione & conceſſione libertatum iſtarum, & aliarum libertatum contentarum in chartâ noſtrâ de libertatibus Foreſtæ, Archiepiſcopi, Epiſcopi, Abbates, Priores, Comites, Barones, Milites Liberè Tenentes, &* **Omnes de Regno dederunt** *Quintam Decimam partem omnium mobilium ſuorum.* For this Grant and Conceſſion of theſe *Liberties* (contained in *Magna Charta*) and other *Liberties* in our *Charter* of the *Liberties* of the *Foreſt*, the *Arch-Biſhops*, *Biſhops*, *Abbats*, *Priors*, *Earls*, *Barons*, *Knights*, *Freeholders*, and *all* of the *Kingdom*, gave the fifteenth part of all their Moveables.

His obſervation upon theſe words is, that P. 138. thoſe which gave this Subſidy were the *Members* of that *Parliament*,

But if it were ſo according to the literal meaning of the words, then **all men**, as well thoſe that had *Eſtates* in *Land*, as thoſe that had not, all **Copy-holders**, all **Tradesmen**, all **Bond-men**, and **Villains**, of which there were great ſtore in thoſe days, and all **Servants** were *Members* of that *Parliament*,

And if ſo, I would willingly underſtand where all theſe people ſhould meet, how their *Counſels* ſhould be *managed*, and how 'tis poſſible

sible in such meetings (if any such there can be) to prevent the greatest *confusion* imaginable.

Omnes de Regno, how to be understood.

The meaning then of the words must be, that the *Arch-Bishops*, *Bishops*, *Abbats*, *Earls*, *Barons*, *Knights*, *Free-Tenents*, and all of the *Kingdom*, or all the *Kings Subjects* **dederunt**, that is, **paid** a fifteenth part of their Moveables to the *King*, for his granting these *Charters*, not that they gave or granted the *Subsidy*; and 'tis reasonable to conclude, that all the King's Subjects paid this fifteenth part, because one way or other little or much they enjoyed the *Benefit* of them.

Magna Charta and the 15th of all mens Moveables how granted.

I take this to be the Genuine sense of the words; but the *History* both of *Granting* the *Charters*, and *Subsidy* out of *Mat. Paris* makes it very apparent who were the *constituent parts* of this *Parliament*. So much of it as is pertinent to this matter, I here transcribe,

Fol. 223. n. 10. 20. 9. *Hen.* 3.

An. Dom. 1225. *Rex Hen. ad* **Natale** *tenuit Curiam suam apud Westmonasterium præsentibus* **Clero, & Populo** *cum Magnatibus Regionis,* **Solennitate** *igitur* **completa** * *ut decebat Hubertus de Burgo Domini Regis* **Justiciarius** *ex parte ejusdem Regis proposuit coram* **Archiepiscopis, Episcopis, Comitibus, Baronibus, & aliis Universis**, *Damna & injurias quæ Regi allata fuerunt in partibus transmarinis; petiit ergo ab omnibus Consilium, pariter & Auxilium, quibus coronæ Angliæ dignitatem amissas ac jura possit pristina revocare, ad hæc quoque plenè perficiendum Regi sufficere credidit, si ei Quinta-Decima pars omnium rerum mobilium totius Angliæ, tam à personis Ecclesiasticis, quam*

* Q. Whether *ut decebat Hubertus* doth not imply that this Convention or Solemnity at *Christmass*, was *ex more*, by Custom. Here is not the least hint of any Summons as at other times.

quam a Laicis donaretur; His in hunc modum respectis, **Archiepiscopus, & concto toto, Episcoporum Comitum, Baronum, Abbatum, & Priorum,** *habito deliberatione pari dedere Responsum, quod Regis petitionibus gratanter adquiescerent, si illis diu petitas Libertates concedere voluisset,* **annuit Rex,** *quod petebant* **Magnates.** That is, in the year of our Lord 1225. King *Henry* at *Christmass* held his *Court* at *Westminster*, and the *solemnity* being *compleat*, as it was fit it should be, *Hubert de Burgh* the *Kings Justiciary* on behalf of the *King* propounded before the *Arch-Bishops*, *Bishops*, *Earls*, *Barons*, and all others, the *Damages*, and *Injuries* the *King* had susteined beyond Sea, and asked of them all *Aid*, and *Counsel*, by which the *Crown* of *England* might recover its lost Dignities, and pristin Rights, and said he believed it would be sufficient fully to perfect that work, if a *fifteenth part* of all the Moveables of *England*, as well of *Ecclesiastics*, as *Laics*, were granted to the *King*. To these things thus urged, the **Archbishops**, and the whole *Assembly* of **Bishops**, **Earls**, **Barons**, **Abbats**, and **Priors**, after **consultation** had about them, gave the *King* this **Answer**, that they would willingly comply with his Demand, if he would grant them their long requested *Liberties*. The *King* **consented** to what the *great men* demanded, and the **Charters** were forthwith transcribed, **Sealed** with the *Kings* **Seal**, and sent into the *several Counties*, and were the very **same Charters** *King John* had before granted. Ibid. n. 29. 30.

Upon

They were Bishops, Earls, Barons, Abbats, and Priors only that granted the 15th, mentioned in *Magna Charta*,

Upon this *Account* of this *Parliament*, or great *Council*, we may observe, that the Men that **consulted** about the *Kings* Demands, that gave the *King* **answer** concerning them, and that **granted** the **fifteenth** *part* of the **Moveables**, as well of the *Ecclesiastics*, as *Laics* of the whole *Kingdom*, were only the **Arch-Bishops, Bishops, Earls, Barons, Abbats**, and **Priors**. And therefore **they** the only **constituent parts** of **this** *Parliament*, as they were also of the *Parliament* or great *Council* held at **Merton** in the 20th year of this *Kings Reign*. Whither says *Mat. Paris*, *Consummato cum gaudio Nuptiali convivio Rex recedens a Lundoniis venit* **Meretonam**, *ut ibi revocati* **Magnates** *una cum Rege de Regni negotiis contractarent.* After the *Nuptial* Entertainment the *King* retired to **Merton**, and called thither the **great Men**, that together with Him they might treat about the *Business* of the *Kingdom*; not one word of the **Commons** in either place.

Fulsom Stat. fol. 9. the Preamble to the Statutes of *Merton*. Fol. 421. n. 40.

At the *Priory* of the Town of *Merton* in *Surrey*.

Having before evinced the meaning of the words **Clerus** and **Populus**, I cannot foresee what *Cavil* can be raised about this *Narrative* of this *Parliament*, unless some men may think there may be something more than *Ordinary*, couched in the words **solemnitate plena**, which signifie nothing but a great or *full Appearance* at the *Solemnity* of *Christmas* in the *Kings Court*; or if they will strain the sense of the word further, in relation to the great *Council*, or *Parliament* it self, they then signifie no more than that it was a

The meaning of *Solemnitate completa*.

full

full **Parliament**, and that there was a *great appearance* of the *Members* or *Constituent parts* of it; and who they were in other full *Conferences* or *Parliaments* may be seen in the following instances.

Convenerant Regiâ ſubmonitione convocati Londinum **Magnates** *totius regni* **Archiepiſcopi, Epiſcopi, Abbates, Priores, Comites & Barones.** There met at *London* by the Kings *Summons* the great Men of the whole Nation, the *Arch-Biſhops*, *Biſhops*, *Abbats*, *Priors*, *Earls*, and *Barons*, and this Meeting was ſo full and great, that **theſe** *Orders* particularly, and no other men whatſoever mixed with them, or mentioned to be in the ſame Aſſembly are called the **Common Univerſity.**

Ib. fol. 639. n. 20. A. D. 1244. 28 *Hen.* 3.

Ibid. lin. 22. The Common Univerſity.

Medio Quadrageſimæ Edicto Regio convocata convenit ad Parlamentum **generaliſſimum totius** *Anglicani Regni* **totalis Nobilitas** *Londini, videlicet* **Prelatorum** *tam* **Abbatum & Priorum,** *quam* **Epiſcoporum, Comitum** *quoque &* **Baronum,** *ut de ſtatu Regni*, &c.

Ibid. fol. 696. l. 1. An. Dom. 1246. 30 *Hen.* 3.

In the middle of *Lent* called together by the *Kings Edict* the **total Nobility** of the *whole Kingdom* of *England* met at *London* in a **moſt general** *Parliament*, that is to ſay, the *Nobility*, of the *Prelates* as well *Abbats* and *Priors* as of the *Biſhops*, alſo the **Nobility** of the *Earls* and *Barons*, that they might treat of the ſtate of the Kingdom, *&c.* No **Commons** in this moſt general *Parliament*.

A moſt general Parliament.

Ibid. fol. 708. n. 30. An. Dom 1246. The University of the Militia.

Et postea in Angliâ in Parliamento *Regni, ubi congregata fuerat* totius Regni *tam* Cleri *quam* Militie *generalis* Universitas *deliberatum fuerit, ut ob reverentiam* Domini Pape *adhuc Nuntius*, &c. And afterwards in *England* in the *Kings Parliament*, where there had met the general University of the *Kingdom*, as well of the Clergy as of the Militia it was deliberated for the reverence due to the *Lord* the Pope, there should yet be a Messenger sent from that whole University, &c.

The *Historian* in this place relates the *continuance* of the Popes exactions upon the *Kingdom*, and recounts what was done for the preventing of them in the last most general Parliament, which is here called the general University, as well of the Clergy, that is, *Arch-Bishops*, *Bishops*, *Abbats*, *Priors*, as of the Militia (that is of the Earls, Barons, and *Tenents in Capite*, who held their Lands immediately of the *Crown* in *Military Service*, and who only the King summoned in his ordinary *Warlike Expeditions*, all other Military *Men* of the *Nation* that held of them by *Mean Tenure* were obliged by their Acts, and so just they were in their publick Impositions, that I do not remember they ever put more upon their Tenents *pro rata*, than they bare themselves.

What that was.

P. 139, 140.

What he says about the confirmation of these Charters in the 25th of *Edward* I. is beyond

beyond the time of the Controverſie between us, The Honourable *Houſe* of Commons then being the Third *Eſtate*, and ſo nothing to the purpoſe.

As to his *cloſing Record* which he ſays he happily found in the *Exchequer*, I dare not pretend to ſo much knowledge of the practice of the Law, as to ſay I underſtood it. But if I do, I think it ſignifies nothing to his purpoſe, for it neither proves, that the Commons were an Eſſential and Conſtituent part of Parliament, before 49 of *Hen.* 3. which was the *deſign* of his *Book*, nor that before that time, they were not repreſented by the *Tenants in Capite*, nor that all the *Freeholders in England* were *Members* of the Honourable *Houſe* of Commons. P. 141. The Record concerning the Prior of *Coventry*.

By this *Record* it is evident, that the *Prior* of *Coventry* paid for *Ten Knights Fees Aid* and *Scutage* divers times in the Reign of *Henry the Third*, and likewiſe it appears by the ſame Record, that in the time of *Edward* I. and *Edward* II. the *Priors* and *Convent* of *Coventry*, paid *Scutage* and *Fines*, but for *two Knights Fees* only; and upon his vouching the *Rolls* in thoſe Kings Reigns, and ſetting forth this matter of Fact, the *Prior* of *Coventry* brings his *Plea*, and ſays 17 *Ed.* 3. that he and his Predeceſſors, held all their *Land* and Tenements, as well thoſe he held in *Demeſn* as in *Service*, by the *Service* of *Two Knights* Fees only, and that the King and his Progenitors were never *ſeized* of any other *Services* by him the Prior, or his Predeceſſors by Fine or *Service* done by the *Bodies* of Men. P. 179, 180. P. 180, 181.

Et quoad hoc, &c. That it was found in the *Rolls* that in the time of *Henry* III. there were certain *Sums* of Money accounted for granted as *Aids* to the same King *Henry*, to make his *eldeſt* * *Son Knight*, and * *Marry* his *Siſter* it ought not to prejudice him; for he ſays that thoſe *Ayds* were not, nor could be reputed *Services*, but they were * **Subſidies** granted by the **Great** and **Community** of the Kingdom ſpon-

---

P. 179.

* As to what is entered in the *Roll* of *Henry* the Third, that the Prior of *Coventry* paid 20 *Marks* a two *Marks* a Fee, for ten *Knights Fees*, for marrying the *Kings Siſter* to *Frederic* the *Emperor*, this was Grant, and no Service: for the *Ayds* due to the King of this *Realm* by *Antient Uſage*, and *King Johns Magna Charta*, were only three, for *Redeeming* his Body, *Making* his *Eldeſt Son Knight*, and for *Marrying* his *Eldeſt Daughter*, and paid only by *Tenents in Caſtle*; and ſo far his Plea was true; but where it is ſaid in the *Roll* of *Henry* the Third, that he paid 10 *l.* for Ten *Knights Fees* to *Marry* the *Kings Daughter*, and as much for the *Kings* Voyage into *Gaſcoigne*; as to both theſe, his Plea was falſe, for they were both Services payable by *Antient Uſage*, and not Subſidies by *Grant* of the People.

What Aids due to our Ancient Kings by Antient Uſage.

Ibid.

taneouſly

arbitrily and of meer will, to be levied as well of the * *Tenents* of * others, as of the *Tenants* of the *King in Capite*: under which Pretext the ſaid account of the foreſaid *Aydes* was as well for the *Fees* of the Tenents of the

---

* That is the Tenents of thoſe that held in Capite, as that held in Mean Tenure, the manner of levying Scutage upon them when it was granted in *Parliament*, was, The King ſent his Writ to the Sheriffs of all Counties where the Tenents in Capite had Eſtates, to diſtrein their Tenents that held of them in Military Service, to pay unto them for their Fees or parts of Fees according to the rate of Scutage taxed by the *Parliament*. See the Writ directed to the *Sheriff* of *Suſſex* for the *Biſhop* of *Chicheſter*, and for other *Biſhops*, *Abbots*, and *Great Men*, before cited; for *Scutage Service*, which was due from the Sub-tenents or Feudataries in Military Service, due to the Tenents in Capite when they ſerved the King in perſon, it was Levyed by virtue of the *Kings Writ* only. — 19 *Hen.* 3. m. 8.

Scutage levied by the Kings Writ.

For example, *Rex Vicecom. Lincoln. Salutem. præcipimus tibi quod habere facias Ven. P. W. Ebor. Epiſcopo Sanctum ſuum de feod. Milit. quæ de nobis tenet in Capite in Baliva tua, ſcilicet de ſcuto 10 l. pro exercitu noſtro de Byham in qua fuit nobiſcum per præceptum noſtrum, exceptis illis qui venerunt ad ſummoniones noſtras, ubi præceptum eſt tam ibi quam alibi occaſione caſtri de Byham. T. apud Stanford 19. die Febr.* — Cl. 5. *Hen.* 3. m. 17. dorſ.

The Kings Warrant to levy Scutage.

Conſimiles Literæ habent Subſcript. Hug. de Nevil. Warino de Montchenſy Rolando de Aeſted Richardo de Grinſted. Willielmus de Camilupo Willielmus Brewet, &c. — Ibid.

Conſimiles Literæ habet Willielmus de Perey de ſud. Milit. quæ tenet de feod. Comit. Arundel. — Ibid.

That year the *Earl* of *Albemarle* by *William Foret* a Retainer of his, fortified *Byham-Caſtle* in *Holland* in *Lincolnſhire*, and waſted the County round about it; which the *King* beſieged the *ſixth* of *February*, and preſently beat the *Caſtle* down about the Defendents ears. — *Paris* fol. 310. n. 30. 40.

Byham-Caſtle taken.

Tam pro feodis tenentium ipsius Prioris loci prædicti quam pro feodis ipsius Prioris propriis. Which by the Certificate of that Prior in the Plea mentioned, were in *anno Decim Feoda.*

then *Prior* of the *place* aforesaid, as for the proper Fees of the *Prior himself*, which the said *Prior* says may appear to the Court, by the *Certificate* of the then Prior in *Henry* the Third's time, that the *Fees* which he held in *Demesn*, and the *Fees* which the *Tenents* held of him were in all *Ten Fees.*

The meaning of the latter part of the *Plea*, (which our Author understood not) is that the *Prior* in *Henry* the Third's time held as his own **proper** *Estate* by his Tenents, and as *Prior* of the *place*, or in *right* of the *Priory*, *Ten Knights Fees*, of which **two** only were the *possession* of the *Prior* and *Convent*, and for **which** they only *fined* and paid *Escuage* in the **time** of *Edward* the First, and Second, and of *those only* they were seized at the *time* the *Prior* was *attached* for the Arrears for the *Services* of **eight** *Knights Fees*, &c.

P. 144. But from the latter part of this *Record* our Author collects, and positively avers, that the Tenents of the *Prior* did grant an *Aid* as well as the *Prior* himself, and that in *Parliament*, for that there was a *Parliament* 32 *Hen.* 3. with what sense or reason this deduction is made let the Reader judge.

And now I have done with his Book, it will be necessary to deliver matter of Fact, concerning this famous *Parliament*, summoned to meet on the Octaves of *Hillary*, or the 20th of *January*, 49th of *Henry* the Third, by which any man may understand what it was, and how it was called. But to clear the way to it, something must be said what was done some years before. There never was any great kindness

between

between the *King* and *Simon Montfort Earl* of *Leycester*, since he first corrupted and then married his Sister *Alienor* Widow of *William Marshall Earl* of *Pembrooke*, by which Marriage not only the *King*, but all the *Nobility* was dissatisfied; whereupon he gathered up a great Sum of Money, and went to *Rome* to get his Marriage confirmed, which by the *Clergy* and *Nobility* of *England* was accounted unlawful, she having before *vowed Chastity*. At Rome by *Bribery* (notwithstanding the *Arch-Bishop* of *Canterbury* had signified the truth to the *Pope*) vouching the Kings consent, though utterly ignorant of his intention, he got the Marriage confirmed; and though the *King* heaped many favours upon him, yet there never was true affection between them; and after a great falling out between him, and the *Kings* half Brother by the Mother, *William de Valentia*, he took all occasions through him and his three Brothers, *Guido*, and *Geofrey de Lusignan*, and *Athelmar* or *Aldemar Bishop* Elect of *Winchester* (to whom the King used more indulgence than was seasonable at that time) to wound the *King's* Reputation.

Montfort corrupted the Kings Sister before he married her. *Paris* fol. 468. n. 40.

Ibid. fol. 471. n. 10. 20.

Ibid. fol. 497. n 50. 498. lin. 1. &c.

Pat. 42 *Hen.* 3. m. 9.

In the year 1258. there was a *Parliament* called at *London* on Tuesday being *Hokeday*, which is on the *Quindene* of *Easter*, that is Tuesday fortnight after *Easter* Tuesday. The King called it about the Business of *Apulia*, and expected Money from it to proceed in that *Affair*; but instead of that, he met with nothing but *Altercations* and *Debates*, and *Enu-*

Paris 963. n. 40.

Ibid. 968. n. 10. Grievances and Complaints against the King.

merations of *Grievances*, and *Complaints* against himself, that slighting the *keys*, and *power* of the *Church*, he did not observe the *Tenor* of the *great Charter*; that he had raised to Dignities and Riches his half Brothers, intollerably against Law and Right, as if they had been the natural people of the Land, and although the Pride of all the *Kings* Brothers, and other *Poictevins* was intollerable, yet *William de Valentia* exceeded them all. *Simon Mountfort* perceiving the dissatisfaction of several of the great Men in this *Parliament*, strikes in for his share in the *Reformation*, and immediately to the last words the *Historian* subjoins from whence chiefly the *Earl* of *Leycester* complained very heartily, yet not to the *King*, but to the Antiquity, calling for *Justice*. And the *King* was upbraided that he promoted and enriched all Aliens, and slighted and wasted his own People, to the Subversion of the whole Kingdom, and was then also charged that he could not repel the injuries of the *pitiful Welsh*. After these *wranglings*, the *Parliament* was adjourned to the *Feast* of *St. Barnaby*, and then to be held at *Oxford*. But during the recess we may note, notwithstanding the complaint against Aliens, *Mountfort* himself was an Alien and Stranger, a French man, born of *French Parents*. He was younger Brother to *Almaric*, at this time *Earl* of *Mountfort* in *France*, who was Son to *Simon*, and he Son to *Almaric*, who was *Base* and to *Robert King* of *France*, and had the *Town* of *Montfort* given him, &c. from *whence* his name, and had gotten here in *England* as much Wealth as

And against his half Brothers.

Ibid. lin. 15.

Leycester calls for Justice.

Ibid. n. 30.

Dugd. Baron. Tom. 1. fol. 751. col. 2.

Montfort an Alien a French man born.

the best of them by the *Kings* favor and bounty.

Barnaby day being come, the *great Men* and Nobles of the Land, hasted to the *Parliament* to be held at *Oxford*, and commanded all such as ought them *Military Service*, to go along with them, so prepared, as if they were to defend their Bodies from attempts of their Enemies, and they did so, palliating their coming thus armed under pretence of going against the *Kings* Enemies the *Welsh*, and withal fearing as they pretended, that the King and his Brothers the *Poictovins* should bring in foreign Assistance against them, and therefore they placed *guards* upon the *Ports*; and being met, observing their *Force*, they were made certain Provisions or Statutes, as they called them, for the Reformation of the State of the Kingdom. They require,

Paris 970. n. 40 The Parliament at *Oxford*, 42 *Hen.* 3.

Ibid. n. 50.

Mat. Westm. fol. 391. lin. 4. n. 10.

1. *The Kings Confirmation of the* Charter *of* Liberties *granted by* King John.

Oxford Provisions.

2. *That there should be* 24 persons *chosen, which by the* Kings Commission *should take upon them the* Government *of the Kingdom.*

3. *They should choose the* Justices, Chancellors, Treasurers, *and other* Officers *and* Ministers, *from year to year for ever.*

4. *That they by* themselves *or* friends *should have the* Custody *of the* King's Castles.

5. *That all* Aliens *should be* Banished *the Land, never to return again, except such as the* well affected *should permit to stay.*

Ibid. And *threaten* the *King* and *Prince Edward* with perpetual imprisonment if they *submit* not, and *swear* to the performance of them; *Paris* fol. 971. n. 20. 30. And they by *Edict* make it Capital, for any of what *Degree*, or *Order* soever to refuse to consent to them. And against such also the *Arch-Bishops*, and *Bishops* of the King's pronounced *Excommunication*.

Ibid. n. 40. & fol. 973. n. 10. *John Earl* of *Warren*, *William de Valence*, and the other half Brothers of the King, refuse the Oath, and are forced out of *England*; the *Ports* are commanded by the *Barons* to be more strictly guarded, as also the Gates of *London* to be strengthened, and kept every night. Then they appoint *Hugh Bigod, Militem strenuum & Legum terre peritum*, Justiciarie, and break up their meeting. Ibid. fol. 974. lin. 1. soon after they send their Agents to *London*, who in a full meeting of the *Citizens* in the *Guild-Hall*, demand of them whether they would immutably adhere unto, and faithfully obey the Statutes of the *Barons*, and manfully resist such as should oppose them, and likewise give them effectual assistance; whereunto they freely consented, and bound themselves

July 22. The *Londoners* consent to bind themselves by their Seal to observe the *Oxford* Provisions,

themselves by a *Chart*, or *Charter*, sealed with the Publick Seal of the City.

Paris, a great Favourer of *Montforts* and the *Barons* Cause, sayes, That *Fulco Bishop* of *London*, because he would not joyn with them, was more tepid, and remiss, then became him, and incurred the Anger of the *Barons*, because he believed he might Justifie the King to the People. Not long after this Bishop dyed of the Plague, of whom the same Author sayes, he was *Vir Nobilis & Magnæ generositatis & nisi paulò antè in* Communi *Baronum* provisione *titubasset, totius regni* anchora & clypeus *stabilitatis & defensionis*. A Noble Person, and of great *Gravity*, and unless a little before he had tripped in the *Provisions* of the *Barons*, he had been the *Anchor* of the whole *Kingdom*, and the *Shield* of Stability, and Defence. Ibid. n. 20. Ibidem, 987 n. 50.

These Provisions which were ordered by the *Barons* to be declared and expounded to the People by the Itinerant Justices of their own appointing, in their Circuits, were the foundation of all the insuing Mischiefs: for the *King* finding himself Undone by them, and the Barons so stiffe, as they would not yield in the least, he procured of the Pope Absolution from his Oath, and then took upon him the *Government* again, and turned out of their places the *Barons Justiciary* and *Chancellor*, and went about to his *Cities*, and *Castles*, incouraging them to stand to him.

The Provisions Ordered to be declared to the People. *Mat. Westm.* fol. 370. n. 10.

Paris, fol. 991. n. 40, 50.

The King turns out the Barons Justiciary, and Chancellor.

Wyst. fol. 379. n. 20. & 380. n. 40.

He likewise sent about his own *Justices* Itinerant through *England*, to whom the *Barons* opposed themselves, and incouraged the People not to appear, or bring any Business before them, because, according to their provisions, they were to set in one County but once in *seven year*. The King proceeds, and placeth new Sheriffs in every County, *removing* such as the *Barons* had made *Sheriffs*, who resolving to make good the *Oxford Provisions*, by the *Counsel* and assistance of *Simon Montfort*, Armed themselves, and on a sudden, when they thought not of it, fell upon the *Aliens*, the *King's Counsellors*, and all they knew adhered to him, and in a *Hostile* manner seized upon their Estates, Places of Strength, Towns and Goods.

1261.

Ibidem, 382. n. 40. And the Sheriffs made by the Barons.

When these things were done, the King was in the *Tower* of *London*, and seeing himself surrounded with his Enemies, He consented to a Peace with the Barons upon these Termes.

Ibidem. fol. 383. n. 20. *Paris*, 992. n. 40, 50. An. Dom. 1264.

First. That *Henry*, *Son* to the King of *Almaine*, should have his Liberty.

Wyst. 383. n. 30.

Secondly. That the *Kings Castles* should be put into the hands of his *Barons*.

Paris, 993. n. 30. An. Dom. 1264.

Thirdly. That the **Statutes** and **Provisions** of *Oxford* should be inviolably observed, as well by the King as others.

Articles of Peace.

Fourthly,

Fourthly. That all *Strangers*, except such as the *Well-affected* should think fit, should presently avoid the *Nation*, never to return again.

But the *King* having some Advantage, and most of the *Twenty Four* being willing the Provisions of *Oxford* should be made less rigid, and more easie to him, *Both Sides* Referred their Differences to the King of *France*, who Mulled the Provisions of *Oxford*; but by evacuating them, he did Annul altogether to Abrogate *King John's* Charter, upon which Exception, *Montfort* and others took advantage, and said, The Provisions were *founded* upon that *Charter*, and therefore would not submit to the *King* of *France* his *Sentence*.

Mat. West. fol. 391. n. 40.

Paris, 992. n. 10.

Ibidem.

Ibid. *Montfort* refuseth to submit to the King of *France* his Sentence.

From that time, *Henry*, Son to the *King* of *Almain*, *Roger de Clifford*, *Roger de Leybourn*, *John de Vallibus*, *Hamo le Estrange*, and many other *Barons* left *Montfort*, and *Roger de Mortuo Mari*, who ever was true to the King, wasted his Lands and Estate; But he Confederating with *Leolin Prince* of *Wales*, sent an Army thither that Invaded, Destroyed, and Burnt the *Lands* and *Estate* of *Roger*. The *Londoners* also Destroy and Burn the Estates of such as adhered to the *King*, and Imprison the *Barons* of the *Exchequer*, and *Justices* of the *Bench*; while the *King*, by the *Assistance* of the *Barons* that adhered to him, took *Northampton* Town and *Castle*,

Ibidem, fol. 992. n. 20. Some of the Barons revolt from *Montfort*.

Ibidem, n. 30.

Mat. Westm. 385. n. 25.

The *Londoners* Imprison the Judges.

Paris, fol. 993. lin. 1. &c. *Caſtle*, with Fifteen of the *Rebellious Barons* in it.

Ibidem, fol. 994. n. 20. The Barons Write Deluſive Letters to the King.

The War thus begun, and the *Earl* of *Leceſter* being made General, to delude the People, the *Earl* of *Clare* and *Glouceſter* joyning with him; They ſent *Letters* to the *King*, profeſſing their *Loyalty* to him, and affirming, that they did thus put themſelves into Armes, as well againſt his Enemis, as their own.

Ibidem, n. 30. The Kings Anſwer to the Barons Letters.

To which the *King* returned, That their *Intentions* were not according to their *Profeſſions*, nor their *Actions* according to their *Pretences*, and therefore defyed them. His Anſwer was dated at *Lewes*, *May* 12. 48 *Hen.* 3. 1264.

Ibidem, n. 40.

In like manner, *Richard King* of the *Romans*, *Prince Edward*, and all the *Barons*, and *Knights* that adhered to the *King*, Wrote to them, and defyed them, but withall provoked them to ſtand to the *Judgment* of the *Kings* Court, to which they were ready to ſubmit, and make their Innocence appear. Theſe Letters were Dated the ſame day.

Ibidem, fol. 995. lin. 3.

Ibidem, n. 10.

After this the *Rebellious Barons* ſent *Henry Biſhop* of *London*, and *William Biſhop* of *Wigceſter* their Mediators for Peace, to the *King*, and offered, for *Damages* done by them through the *Kingdom*, 30000 *l.* ſo that the *Statutes* of *Oxford* might ſtand good.

At this time at leaſt 360000 *l.*

The

The King not accepting their Offer, they March toward *Lewes* in *Suſſex*, where he then was, who hearing of their coming, advanced toward them; The *Battel* being joyned, *Prince Edward* ingaged the *Londoners*, and beating them, made too great a Purſuit, ſo that before his return, the other part of the *Kings Army* was routed, and his Father having his Horſe killed under him, was, with *Richard King* of *Almain*, taken *Priſoner*, and many other *Barons*; but ſtill the *Caſtle* making a ſtout defence againſt the *Barons*, at which the Prince took Courage, and rallyed his Forces, with deſign to try the fortune of another Battel, which *Montfort* and his *Confederates* perceiving, they ſent Mediators for Peace, promiſing the next day they would effectually Treat of Peace, which was done by the Mediation and Entercourſe of the *Fryers Preachers*, and the *Fryers Miners*, between both Parties, and the iſſue was this. That both Parties ſhould apply themſelves to the *King* of *France*, and procure him to chooſe three *Prelates*, and three *Noblemen* of *France*, which ſix ſhould nominate two Frenchmen, who coming into *England*, ſhould chooſe a third Perſon, an *Engliſhman*; which three ſhould determine all Controverſies between the *King*, and *Barons*, and order all things concerning the *State* of the *Kingdom*. And for the Confirmation of this, both Parties took their Corporal Oaths, and there being an Inſtrument made of it, the Kings Seal, and the Seal of the *Barons* was affixed to it. And in the mean time *Prince Edward*, and

Ibidem, n. 20, 30. The Battel of *Lewes*.

Ibidem, n 40, 50.

Ibidem, & fol. 996. l. 1. & n. 10.

Ibidem, n. 10. *Monfort* offers a Treaty.

Mat. Weſtm. fol. 393. n. 40, 50.

This Inſtrument is called, The *Miſe* made at *Lewes*. Pat. 48 *H.* 3. m. 6. Dors.

Prince *Edward* an Hostage for Peace.

and *Henry* the eldest Son of the *King of Almain*, remained Hostages with *Montfort*, upon hopes of Peace, and a Deliberate Treaty about the Provisions at *Oxford*, and such things as might be found expedient for the quiet and safety of the Nation. But when *Montfort* had *King Henry*, his *Brother Richard King of the Romans*, *their Sons Edward and Henry*, and many others of the *Nobility* Prisoners, and carrying about with him the *King* and *Prince*, until he had taken in all the Strong *Forts*, and *Castles* of the Land, he grew more averse, and difficult to Treat of the Form, as it had been agreed at *Lewes*; And then making *King Richard* Prisoner in the *Tower*, he sent *Prince Edward* and his *Cousin Henry* to *Dover-Castle*, but carryed the King about with him where ever he went, and spoiling all those that faithfully adhered to him, or that at any time had served him, of all their moveable Goods.

Paris, fol. 996. l. 40.

Montfort grows averse to Peace.

Ibidem.

Mat. Westm. fol. 394. lin. 2.

And, *postbæc convenientibus Londini Prælatis, Comitibus, & Baronibus*, partis illius *quæ Regem suum tam seditiosè tenuit captivatum*; compromissi Lewensis & prestiti Juramenti, *imò* sue salutis *immemores*, *ad Novas Ordinationes Regni se convertere Curaverunt*; After these things the *Prelates*, *Earls* and *Barons* of that Party, *which seditiously* held their King Prisoner, met at *London*, and unmindful of the *Compromise* at *Lewes*, the *Oath* they had taken, and their *own Salvation*, they bethought themselves of *New Ordinances* for the *Government* of the *Kingdom*;

Ibidem, lin. 3.

No Commons here though in the Record 'tis said, *Et communitatis præsentis*, as before is noted.

they

they Ordained, *Inter Cetera statuerunt quod* two **Comites**, & unus **Episcopus** *ex parte ipsius* **Communitatis** *Electi*, **Novem** *personas eligerent, quorum tres Regi assisterent, & de Consilio eorum* **trium**, & **Novem**, *tam in Domo Regiâ quam in Regno procederent Universa*; & *quod à Rege, sine illorum saltem trium Consilio, aliquid fieri non valeret.* Among other things, that two **Earls**, and one **Bishop**, elected by the Community, should choose **Nine** Persons, of which three should assist the King, and by the Counsel of those **Three**, and **Nine**, all the *Affairs*, as well of the Kings House, as of the Kingdom, should be directed, and that what the King should do without the Advice of them, at least of the three, should signifie nothing. *Sicque* **Comitibus Leycestriæ**, & **Glovernie**, & **Episcopo Cicestrensi** (who promised, all that Fought stoutly against the King, and were killed in the Battel of *Lewes*, immediate entrance into Heaven) **Consiliariis** & **Capitaneis** *ordinatis*. And so the *Earls* of *Leycester*, and *Gloucester*, and *Bishop* of *Chichester*, were ordained the three *Chief Counsellors*.

Ibidem, lin. 6.

This exactly agrees with the Record before cited, *Pat.* 48 *Hen.* 3. m. 6. Dorſ.

Two Earls, and one Bishop to choose Nine Persons to Govern the Kingdom.

Ibidem, n. 10. *Paris*, fol. 995. n. 20. He forgot Purgatory.

Pat. 48 *Hen.* 3. m. 10.

Then *threatning* the *King* they would choose Another, and the *Prince*, to *keep him perpetually in Prison*, *Commento fraudis consentire cœpit sunt*, they were compelled to *Consent* to this *Cheat*. To which, being drawn up into an Instrument, the *Bishops*, *Earls*, and *Barons*, set their *Seals*. The Record sayes. *Hoc autem Ordinatio facta fuit in London de consensu*,

Mat. Westm. fol. 394. lin. 13.

Pat. 48 *Hen.* 3. m. 6. Dorſ. See here before in this Book.

Witnesses to the Instrument of Government.

consensu, voluntate, & præcepto Domini Regis nec non Prælatorum, Baronum, ac etiam Communitatis præsentia. In cujus Rei Testimonium Domini, R. Lincoln, & Hug. Elien. *Episcopi* R. Com. Norf. & Mar. Ang. Rob. de Ver. Com. Oxon. Humfr. de Bohun, William de Monte-Cantio, & Major Lond. *Signa sua huic Scripturæ apposuerunt. Actum in* Parliamento *Londin. Mense Junii, An. Dom.* 1264. That is,

This Ordination was made in *London*, by the *consent*, and *good liking*, and *command* of the *King*, and also of the *Prelates*, *Barons*, and the Community present. In witness whereof the Lords *Bishops*, *R.* of *Lincoln*, and *Hugh* of *Ely*, *R.* Earl of *Norfolk*, and *Marshal* of *England*, *Robert de Ver* Earl of *Oxford*, *Humphrey de Bohun*, *William de Montchensy*, and the Mayor of *London*, have set to their Seals. Done in the Parliament at *London*, in the Moneth of *June*, 1264.

Concerning this Parliament, and these Men, see before in this Book.

Mat. Westm. fol. 394. lin. 16.

Having contrived and perfected these Ordinances, they sent Letters to the *Bishop* of *Sabine Cardinal*, and then the *Popes Legate* in *France*, and to the *Illustrious King* of *France*, that they would utterly Annul the Compromise made at *Lewes*, and establish this new Peace made by an Amicable consent of both Parties; And the *Bishops* of *London*, *Winchester*, and *Worcester*, and some others of the Province of *Canterbury*, earnestly *besee*ched the aforesaid *Legate*, that he would be very

Ibidem, lin. 18, 19.

They use means to the Legate to Confirm the Instrument of Government.

ready

ready to *promote* that **Peace**. And not long after, *viz.* on the Saturday after the Nativity of the *Bleſſed Virgin*, which is *September* the 8th, the *Biſhops* of *London*, *Worceſter*, and *Winchester*, with *Hugh D'eſpencer*, Juſticiary of *England*, *Peter Montfort*, and *Richard de Mepham Arch-deacon* of *Oxford*, were conſtituted *Procurators*, and *Commiſſioners*, to Treat in the Preſence of the *Magnificent Prince*, the *Illuſtrious King* of *France*, and the *Venerable Father*, *G. Biſhop of Sabine*, and *Legate* of the *Apoſtolick See*, or either of them, about the Reformation of the State of the Kingdom of *England*, with Power to do whatever they thought fit in this matter, with a ſpecial Clauſe of Power to **Peter Montfort**, that what he ſhould Sware to, the King muſt be obliged to it.

Reformation of the State of the Kingdom.

What this *Peter Montfort* was, ſee before in this Book.

Rex omnibus, &c. *Salutem. Noverit Univerſitas veſtra quod Nos Ordinamus & conſtituimus Ven. Patr. H. Lond. W. Wigorn. & J. Winton. Epiſcopos. Et Nobiles viros Hug. Diſpenſatorem Juſticiar. Angl. & Petr. de Monteforti & Magiſtrum Ricardum de Mepham Archidiacon. Oxon. procuratores & Nuntios Noſtros*, &c. as it is Tranſlated verbatim. *Dat. apud Cantuar. Die Sabbati prox. poſt feſtum Nativitatis Beatæ Virginis*, *An. Dom.* 1264.

Pat. 48 *Hen.* 3. m. 4. Dorſ.

The Kings Patent, *&c.*

The Intent of all this Addreſs to the Legate was no other, then to palliate theſe Practices towards the King with fair and ſpecious Pretences to the **Pope**, leaſt he ſhould thunder out his Curſes (as he did

Paris, fol. 1001. n. 40.

aftewards by his **Legat Ottobon**) against them.

Pat. 49 *Hen.* 3. m. 6. He began his Reign, *Oct.* 19. 1216.

While these *Barons* were in this Power, *Montfort* extorted from the Prince a grant of the Inheritance of the *Earldom* and *Honor* of *Chester*, with its *Appurtenances*; and caused another Patent, **dated** *December* 24, to be Sealed in the Kings Name for ratifying of it. He **passed** also on the 20th of *May* following another Patent of that *Earldom* and *Honor*, as also of the *Castle*, and *Honor* of *Pec.* with the *Castle* and *Town* of *Newcastle Underline* in *Staffordshire*, to himself and heirs.

Montfort Extorts a Grant of the Earldom of *Chester* from the Prince.

Pat. 48 *Hen.* 3. m. 11. The Earl of *Gloucester* gets the Estate of *John Warren* Earl of *Surrey*.

Nor was the *Earl* of *Gloucester* unmindful of himself, for he procured a Grant of all the small Estate of *John de Warren Earl of Surry*, who had faithfully adhered to the *King*, lying in *England*, except the *Castles* of *Rigate*, and *Lewes*.

Pat. 49 *Hen.* 3. m. 26. *Peter Montfort* gets a great *Estate*, and the Princes Lodgings. *Ibidem*, m. 20.

Nor did *Peter Montfort* forget to inrich himself, for having obtained the Government of *Whitteuton Castle* in *Shropshire*, and of *Hereford Castle*, and other things of value; for a further conveniency in his high trusts, he procured a Grant of *Prince Edwards Lodgings at Westminster*.

They send out Writs in the Kings Name to Summon a Parliament.

After these Great Things done, and a New Government was framed, and set up, they sent out *Writs* in the *Kings Name* unto divers *Bishops*, *Abbats*, and *Priors*, and to such of

of the *Noblemen*, as were of their own party. To the *Sheriffs* of *Counties*, *Cities*, *Burghs*, and the *Cinque-Ports*.

The first was to the Bishop of *Durham* in this Form.

Henricus Dei Gratia Rex Angliæ, Dominus Hiberniæ, & Dux Aquitaniæ; Ven. in Christo Patri R. eâdem gratiâ Episcopo Dunelmensi Salutem. Cum post gravia turbationum discrimina dudum habita in regno nostro, Charissimus filius Edwardus Primogenitus noster pro pace in regno nostro assecurandâ & servandâ Obses traditus Extitisset; & jam sedatâ (Benedictus Deus) turbatione prædictâ super deliberatione ejusdem salubriter providendâ, ac plenâ securitate, tranquillitate & pace ad honorem Dei & utilitatem totius Regni nostri firmandâ & totaliter complenda, ac super quibusdam aliis regni nostri negotiis, quæ sine consilio vestro, & aliorum Prælatorum & Magnatum *nostrorum nolumus expediri, cum eisdem tractatum habere nos oporteat, vobis Mandamus rogantes in* fide, & dilectione *quibus nobis tenemini, quod omni Occasione post-positâ, & negotiis aliis prætermissis, sitis ad nos* Londini *in Octabis Sancti* Hillarii *proximè futuris nobiscum, & cum prædictis Prælatis, & Magnatibus nostris quos ibidem vocari fecimus super præmissis tractaturi, & Consilium impensuri. Et hoc sicut nos & honorem nostrum & vestrum, nec non & Communem Regni nostri tranquillitatem diligitis, nullatenùs omittatis. Teste Rege apud* Wigorniam, 14 *die* December.

Cl. 49 *H.* 3. m. 11. Dorso. in Schedula. The *Writ*.

He began His Reign, *October* 19. 1216.

The Writ of Summons, 49 *Hen.* 3.

Henry, By the Grace of God, King of *England*, Lord of *Ireland*, and Duke of *Aquitain*, to the Venerable Father in *Christ*, *R.* by the ſame Grace Biſhop of *Durham*, Greeting, Whereas, after great Troubles and Confuſions in our Kingdom, Our Eldeſt Son **Edward** was delivered an **Hoſtage** for the ſecuring and eſtabliſhing Peace. And the ſaid Troubles (Bleſſed be God) being now over, for the delivery of him out of Priſon, and the ſetling of a full *Security*, *Tranquillity* and *Peace*, to the **Honor** of *God*, and the profit of the whole Kingdom; and for tranſacting ſome other buſineſs of the Kingdom, which without your Counſel, and the Counſel of others of Our *Prelates* and *Great Men*, we would not diſpatch, and with whom we ought to Treat. We command you, requiring, that in the Faith and Love by which you are bound to us, that every occaſion being poſt-poned, and all buſineſs laid aſide, you be with us at *London*, in the *Octaves* of St. *Hillary* next coming, to Treat with Us and our Prelates, and Great Men, which we have cauſed to be called thither, and to give your Advice upon the Premiſes; and this as you love Us, Our Honor, and your own, and alſo the Common Tranquillity of Our Kingdom, ye may in no wiſe omit.

These *Octaves* are *Jan.* 20.

Witneſs the King at *Worceſter*, 14th day of *December*.

Eodem

Eodem modo Mandatum eſt

Epiſcopo Carleol.
Abbati Sanctæ Mariæ Ebor.
Priori Dunelm.
Priori Sanctæ Trin. Ebor.
Abbati de Seleby.
Abbati de Furnes.
Abbati de Fontibus.
Abbati de Ryeval.
Abbati de Melſa.
Abb. de Rupe.
Abb. de Bellalanda.
Priori de Bridlington.
Priori Sancti Oſwaldi.
Abb. de Rufford.
Pr. de Blida.
Pr. de Thurgarton.
Pr. Carleol.
Abb. de Whiteby.
Pr. de Giſeburn.
Archiepiſc. Ebor.
Priori de Parco.
Decano Ebor.

Eodem modo Mandatum eſt ſubſcriptis, viz.

Epiſcopo London.
Epiſc. Winton.
Epiſc. Exon.
Epiſc. Wygorn.
Epiſc. Lincoln.
Epiſc. Elien.
Epiſc. Sarum.
Epiſc. Cov. & Litch.
Epiſc. Ciceſtren.
Electo Bathon. & Well.
Decano Exon.
Decano de Welles.
Decano Sarum.
Decano Lincoln.

Four of theſe Biſhops were Excommunicated by the Pope for their Rebellion, *London*, *Winton*, *Worceſter* and *Chicheſter*; and ſurely they were notable Rebels that he would Excommunicate; and two others of them, *Lincoln* and *Ely*, were Parties to the *New Inſtrument* of Government, and the reſt no doubt of the ſame Batch.

In forma prædicta Scribitur Abbatibus & prioribus ſubſcriptis ſub hac data:
Teſte Rege apud Wodſtoke
24 *die* Decembris.

Abbati Sancti Edmundi.
Abbati de Waultam.
Abbati de Sancto Albano.
Electo de Eveſham.
Abb. Weſtmonaſterii.
Abb. Glaſton.
Abb. de Reading.
Abb. de Cirenceſtre.
Abb. de Waverle.
Priori Elienſi.
Pr. Norwicenſi.
Pr. de Merton.
Abb. de Oſeney.
Pri. S. Fridſwid, Oxon.
Abb. de Meſſenden.
Pr. de Lanton.
Abb. de Bello,
Priori ordinis de Semprinham.
Pr. de Walton.
Pr. Hoſpitalis St. John. Hieruſalem *in* Angliâ.
Magiſtro Militiæ Templi *in* Angliâ.
Abbati de Rameſic.
Abb. de Buurgo.
Abb. de Thorney.

Abb. de Crowland.
Abb. Ceſtriæ.
Abb. Salop.
Abb. de Hulmo.
Abb. de Bardenei.
Abb. de Colceſtre.
Priori de Dunſtaple.
Abb. de Bello loco.
Abb. de Parco Ludæ.
Abb. de Stanleigh.
Abb. de Lilleſhull.
Abb. de Biltleſden.
Priori de Bevoir.
Priori de Lewes.
Abbati de Clerevaus.
Priory de Stodeley.
Abb. Sancti Auguſtini Cantuar.
Abb. de Certeſey.
Pr. S. Trinit. Cantuar.
Abb. de Hida Wynton.
Abb. de Middleton.
Abb. de Cerne.
Abb. de Abbotsbarie.
Abb. de Taveſtock.
Pr. de Huntingdon.
Abb. de Suleby.
Abb. de Wardon.
Abb. S. Jacobi Northampt.
Abb. de Leiceſter.
Abb. de Kirkſted.

Pr.

Pr. de Eton.
Priori de Cruce-Roys.
Abb. de Kirkſtall.
Abb. de Tame
Pr. de Bermondſei.
Pr. de Bernwell.
Abb. de Morevall.
Abbati S. Auguſtini Briſtoll.
Abb. de Malmesburie.
Abb. de Michelnei.
Abb. de Abindone.
Abb. S. Petri. Glouc.
Abb. de Perſoure.
Abb. de Wynchecomb.
Pr. de Coventre.
Pr. de S. Neoto.
Priori S. Swythini Wynton.
Abb. de Leſnes.
Priori de Leedes.
Priori de Landa.
Priori de Spalding.
Pr. St. Barthol. London.
Pr. de Kenilworth.
Abb. de Oſulveſton.
Abb. de Teukesburie.
Priori de Finſheved.
Abb. de Middleton.
Abb. de Valleden.
Abb. de Croxden.

The

The Reaſon why there was ſo many *Abbats* and *Priors* Summoned, was, becauſe he thought himſelf ſure of them; he was a Great Zealot, and a Godly Man in thoſe times, a Great Minion of theſe Religious Men (as then called) as alſo of the *Biſhops* and *Clergy*, and they at leaſt ſeemingly Great Favorites of his, *Paris, fol.* 995. 10. 998. 30.

Item in formâ prædictâ mandatum eſt Comitibus & aliis ſubſcriptis. Dat. apud Wodeſtoke *viceſſimo quarto die* Decembris.

Comiti Leiceſt.
Comiti Glouceſtr.
Comiti Norfolciæ, & *Mareſcallo* Angliæ.
Comiti Oxon.
Comiti Derb.
Radulpho *de* Camoys.
Rogero *de* S. Johanne.
Hugoni *le* Deſpenſer *Juſticiario* Angliæ.
Johanni *filio* Johannis.
Williemo *de* Munchenſi.
Nicholao *de* Segrave.

Johanni

Johanni *de* Veſci.
Radulpho Baſſet *de* Drayton.
Henrico *de* Haſtings.
Galfrido *de* Lucy.
Roberto *de* Ros.
Johanni *de* Eyvill.
Adæ *de* Novomercato.
Waltero *de* Colevill.
Willielmo Marmyon.
Rogero Bertram.
Radulpho Baſſet *de* Sapcote.
Gilberto *de* Gaunt.

Theſe Earls and Barons were all in Arms againſt the King, as may be ſeen in *Mat. Paris, Mat. Weſtminſter, Dugdales Baronage, &c.*

Item Mandatum eſt ſingulis Vicecomitibus per Angliam *quod venire faciant duos milites de legalioribus & diſcretioribus militibus ſingulorum comitatuum ad Regem* London, *in* Octabis *predictis in formâ ſupradicta.* Without date.

It doth not appear by the Writ, whether the *Sheriffs*, or *Counties* were to Elect and ſend theſe Knights; The *Sheriffs* then were of the Faction, and made by them, and 'tis here ſaid only, *Quod venire faciant.*

Item

Item in forma prædictâ scribitur civibus Ebor. civibus Lincoln *& cæteris Burgis Angliæ quod mittant in formâ prædictâ duos de discretioribus & legalioribus & probioribus tam civibus quam burgensibus suis.* Without date.

Cl. 49 Hen. 3. m. 11. Dors. *in Schedula.*

Rex Baronibus & Ballivis portus sui de Sandwico, salutem. Cum Prelati & Nobiles Regni nostri tam pro negotio liberationis Edwardi *Primogeniti nostri quam pro aliis Communitatem Regni nostri tangentibus, ad instans Parliamentum nostrum quod erit* London *in Octab. Sancti Hillarii convocari fecimus, ubi vestra sicut & aliorum fidelium nostrorum presentia plurimum indigemus. Vobis mandamus in fide & dilectione quibus nobis tenemini firmiter injungentes, omnibus aliis pretermissis, mittatis ad nos ibidem quatuor de Legalioribus & Discretioribus portus vestri. Ita quod sint ibid. in Octab. predictis. Nobiscum & cum prefatis Magnatibus Regni nostri tractatum & super premissis Consilium impensuri. Et hoc sicut honorem nostrum & vestrum, & communem utilitatem Regni nostri diligitis nullatenus omittatis. Teste Rege apud* Westm. *20 die* Januar.

Similiter mandatum est singulis portubus pro se.

Without

Without the *Hiſtory* of this Nick of Time, this Writ is not fully underſtood.

There were in the *Marches* of *Wales* ſeveral *Loyal Barons*, *Roger Mortimer*, *James Audely*, *Roger* de *Leybourn*, *Roger* de *Clifford*, *Haimo* le *Strange*, *Hugh Turbivile*, and many others, being much troubled at the uſage of the *King* and *Prince*; *unanimi contra Comitem Leyceſtria inſurgunt conſenſu*; with one conſent took Armes againſt the *Earl* of *Leyceſter*. Theſe brake down the Bridges upon the *River Severn*, and ſecured themſelves in the *Borders* of *Wales*, on the Weſt-ſide of it. *Paris*, fol. 996. n. 50.

To Reduce theſe, *aſſumpſit Secum Regem Henricum*, *quem habuit adeo acclivem*, &c. *Montfort* carryed with him the *Obſequious King* (made ſo by Threats) and Marched with a great Army to *Worceſter*: and having procured his Faſt Friend *Leolin Prince* of *Wales* to come upon the back of them, they were forced to make a Peace, on condition they ſhould leave the Nation for a year, and deliver up their *Caſtles* to *Leyceſter*, to which Termes they the more readily conſented, that *Prince Edward* might be freed of his Impriſoment. *Weſtm.* fol. 389. n. 40, 50.

Montfort carries the King to *Worceſter*.

The Barons Marchers forc't to make Peace. They deliver up their Caſtles.

The *Earl* of *Leyceſter* being at this time at *Worceſter*, and having the King with him, The Writ to the *Biſhop* of *Durham*, 11 other *Biſhops*,

The Firſt *Writ* of *Summons* dated at *Worceſter*.

Bishops, and the *Elect* of *Bath* and *Wels*, *Abbats*, 9 *Priors*, and 5 *Deans* of *Cathedral Churches*, was dated there as above.

Ibidem, 390. lin. 7. The King keeps his *Christmass* at *Woodstocke*. Ibid. n. 10.

But from *Worcester* (all things being quiet in the *Marches* of *Wales*) the King went northwards *Woodstock*, to keep his *Christmass* there.

Sed & Comes arridente ei fortuna in omnibus quæ mente conceperat, idem festum celebravit Castro suo de Kenelworth, &c. And the Earl fortune favouring him in all things he had contrived, celebrated the same Feast at his *Castle* of *Kenelworth*. *Jam quidem omnis Anglia præter* **Aquilonem ulteriorem** *quæ adhuc conspiraverat contra eum, instigantibus Rege Scotiæ & Johanne de Baliolo, inclinata erat ei, & subjecta, omnia per ipsum ordinata sunt, omnia Regis castra ejus ditioni sunt Commissa; Nec etiam* **ipse Rex** *qui jam Regnando* **quinquagesimus** *extiterat nisi prærogativâ nominis habebatur adeo ut Terram suam perlustrare, vel peragrare non poterat, quin ejus conductu & dispositione totaliter fieret alterius.* For now all *England* but the *utmost North part* of it, which as yet held out against him, by the instigation of the *King* of *Scots* and *John Baliol*, was subject to him; all things are ordered by him, all the *Kings Castles* are put into his hands; Nor was the *King*, that had now Reigned *Fifty* years, any more then a *Shadow*, so that he could not walk in his own Land without a *Keeper* and *Guard*, and under the *total disposition* of some other

Montfort subdued all *England*.

Disposeth all things at his pleasure.

The King but a Shadow, he went not abroad without his Keepers.

ther person. And his Keepers were usually Montforts Sons, Hugh D'espencer, and John Fitz-John, the Earl of Glouceſter being excluded from the custody of him. Ibidem, 394. n. 30.

And then in the same form Writs were directed to 54 *Abbats* more, 28 *Priors*, and the *Maſter* of the *Temple*, Dated at **Woodſtocke**, *December* 24. At the same time also, and in the same form, Writs were sent to **Six Earls** only, and 17 **Barons**, **all** high *Men* of this *Faction*; and to the *Biſhop* of *Norwich* singly a Writ was directed, Dated there *December* 26. Writs of Summons dated at *Woodſtoke*.

What this Convention did, it doth not, that I can find any where, appear; they sate not long for the Writs for the *Expences* of the *Knights* and *Burgeſſes* (which are the first upon Record) bear date at *Weſtminſter*, *Feb.* 10. It is not probable that the **Prince** had then his *Liberty*, for they talked of that almost a year, and he **obtained** it not until he had granted the *County Palatine* of *Cheſter* to the *Earl* of *Leyceſter*, the last *Patent* whereof was passed, *May* 20. 49 *Hen.* 3. and then he was only taken out of *Dover Caſtle*, and made *Priſoner* at large under a Guard, as his *Father* was, until he made his Escape from his *Keepers* at *Hereford Caſtle*, on *Saturday* in *Whitſun*-Week. Clauſ. 49 *H.* 3. m. 10. Notwithstanding the pretence of the Writ. *Weſtm.* fol. 394. n. 40. The Prince was by this Convention freed from his Imprisonment in *Dover*-Caſtle.

The *Delays*, *Confuſion*, different *Form*, and Dates of these Writs are new, and somewhat strange; it was not so in *Auguſt* and *September*,

September, immediately preceding the date of these Writs. Then the Prelates and Great Men of the Faction only granted a *Tenth* of all *Eccleſiaſtical Livings*.

Cl. 48 H. 3. m. 3. Dors.

Rex Epiſcopo Norwicens. Salutem. Cum *per* **Prelatos & Magnates** *Regni noſtri proviſum ſit, & unanimiter conceſſum, quod Decimæ proventuum omnium beneficiorum in regno conferantur ad communem utilitatem Regni & Eccleſiæ Anglicanæ*, &c. **Teſte** *apud Cantuar.* **1 Die** *Septembr. & in Clauſ.* of this year, *M. 5. Dorſ.* **4 Junii**, there is a *Writ* of *Summons* in the old form to the *Barons*. It ſhould ſeem the Proceſs was gradual, by the different *Dates* of the Writs; or that they were iſſued upon **Emergences**, or as the **Conſidents** and Well-**affected** were thought of. For moſt certainly, all theſe Perſons were named by *Montfort*, and his *Privado's*.

The Well-Affected thought of by degrees.

Dugd. Baron. fol. 759. col. 2. The probable Cauſe that moved *Montfort* to Summon this Convention.

And without doubt, as others have conjectured before me, the danger that *Simon*, and his *Privado's* apprehended, from the *concourſe* of the *Nobility*, and their great *Retinues*, and the Example of his, and the *Barons* practices at *Oxford*, was the reaſon why they **altered** the *Antient Uſage*; and of their *ſending*, *directing*, and in the *King's* name *commanding*, the *Sheriffs* of each *County*, the *Cities*, and *Burghs*, to ſend two *Knights*, *Citizens*, and *Burgeſſes* reſpectively.

After

After the Battel of Evesham, into which *Montfort* forced the *King*, where he was wounded. *Domino Rege violenter adducto*, says *Mat. Westminster*. *Triumphatis hostibus, Rex* Potestati Regiæ *restitutus, de consilio filii Willaris Wintoniam Parliamentum convocavit, in Nativitate Virginis gloriosæ, ubi inito concilio, civitatem Londinensem, ob suam Rebellionem privavit suis privilegiis, & Libertatibus antiquis, &c.* The King having vanquished his Enemies, and being restored to his *Kingly Power*, by the Advice of his Son called a *Parliament* at *Winchester*, on the 8th of *September*, where the City of *London* had its *Priviledges*, and Ancient *Liberties* taken away for its *Rebellion*, &c. Whether there were any *Knights*, *Citizens* and *Burgesses* in this *Parliament*, I think no Man can or doth know.

It was fought Aug. 5. 49 H. 3.

Fol. 395. n. 20.

Paris, fol. 999. lin. 2. Sept. 8.

The Liberties and Priviledges of the City of London taken from it.

But three years after, in the 52 of this Kings Reign, at the making of the *Statutes* of *Marlborough*, they were certainly there, as appears by the Preamble. The most discreet Men being called together, as well of the *Higher*, as of the *Lower* Estate. And at the making of the *Statute* of *Westminster*, the third of *Edw.* I. they were present, and Parties; The Preamble whereof runs thus: *These be the Acts of King* Edward, *&c. By his Council, and by the Assent of Archbishops, Bishops, Abbots, Priors, Earls, Barons*, and all the Commonalty of the *Realm* being thither *Summoned*.

An Dom. 1267.

Pultons Stat. fol. 16. Ibidem 23.

But then all the *Barons*, and *Tenents in Capite*, were not summoned according to the former usage; for as we find it in *Cambden*, of the *Seditious* and *Turbulent* multitude, *King Henry*

Britan. fol. 122

Henry the Third called only the Chiefest of them to *Parliament* by his *Writ*.

He makes this Remarque, while he is taking notice of the *various acceptation* of the word *Baro*. *In Chartis, & Historiis ejus Seculi* (saith the Learned *Antiquary*) *Omnes fere* Nobiles *dicuntur* Barones, *plenaque Honoris Appellatio illa sane tunc erat, & nomine* Baronagii *Angliæ*, Omnes Superiores *quodammodo regni ordine, Scilicet* Duces, Marchiones, Comites & Barones *continebantur. Sed ad* Summum Honorem *pervenit, ex quo Henricus Tertius ex tantâ multitudine quæ seditiosa & Turbulenta fuit,* Optimos quosque *rescripto ad Comitia Parliamentaria evocaverit. Ille enim* (ex satis antiquo Scriptore loquor) *post magnas perturbationes, & enormes vexationes inter ipsum Regem, & Simonem de Montfort & alios Barones motas & Sopitas, Statuit, & ordinavit quod omnes illi Comites & Barones*, &c. *Comites & Barones Angliæ quibus ipse Rex dignatus est,* Brevia *Summonitionis dirigere, venirent ad Parliamentum suum, &* Non alii : *Nisi forte Dominus Rex* alia illa Brevia eis *dirigere voluisset.*

Ordines.

Hen. 3. Summons to Parliament what, and which Barons be pleased.

The words of Cambdens antient Author.

That is, in the *Charters*, and *Histories* of those Times, almost all the *Noblemen* were called Barons, and it was then an appellation full of *Honor*, or a *Name* of great *Extent*; and under the *Name* of Baronage of *England*, all *Superior Orders* as it were of the Kingdome, that is to say, Dukes, Marquesses, Earls and Barons were contained.

contained. But it became a *word of highest Honour*, since *Henry* the Third, out of so great a *Multitude*, which was **Seditious** and **Turbulent**, called the **Chiefest**, or **Greatest** of them by his *Writ* to *Parliament*; For he (I speak it out of a Writer antient enough, says *Camden*) after great Troubles, and enormous Vexations, raised between the *King*, *Simon Montfort*, and other *Barons*, when they were overcome, and quieted, **Appointed**, and **Ordained**, that all those *Earls*, and *Barons* of the *Kingdom* of *England*, to **which** he thought **fit** to *direct Writs* of *Summons*, should come to his *Parliament*, and **no others**; unless by **chance** the King would direct other such Writs to **them**.

Barones Regni called to Parliament at the Kings Pleasure

And the Practice was then, and hath been ever since, accordingly, the *King* only calling the Great *Barons* to set as *Barons* by his *Writ* (though in those times probably the *King* might omit to Summon whom he would) and if at any time he called any others by those his **Alia illa Brevia**, his *such other Writs*, as had been directed to the *Earls* and Great *Barons*, They were **Pares Baronum**, the **Autres Grand** and **Nobiles** mentioned frequently in the old *Parliament Rolls*, and old *Summons*; and though some of them were many times Summoned, and their *Heirs* after them, yet were they no *Barons*, the *Writs* of Summons not making them such, according to the *Vulgar Error*. Nor can any Man think, or fancy (with any Sense or Reason) that the **alia illa Brevia**, the *other same Writs*,

See Mr. *Elsyng's* manner of holding Parliaments, from p. 27, to p. 46.

were directed of *Course* to any *County's*, *Cities*, or *Boroughs*, for Mr. *Camdens* Author says, *Nisi forte Dominus Rex alia illa Brevia*, unless *casually*, or by *chance*, or *sometimes*; Other of those same very Writs, and of the same form which had issued to the *Earls* and *Barons*, were directed to any *others*; And to make it clear, without contradiction, those **alia illa Brevia**, which must be such as were directed to the Noble-Men, were of a different **form** from those for **Electing** of *Knights*, *Citizens*, and *Burgesses*, which were **directed** to the **Sheriffs** of *Counties*, Not **els** (as it is in *Camdens* Author) to the **parties** themselves.

See the place in *Camden.*

Camd. Britan. fol. 122.

And what *King Henry* a little before his Death begun, that is, to call such *Earls*, and *Barons*, **quos dignatus est**, Such as he pleased; *Edward* the First, and his *Successors*, constantly observed.

Having had one *Great Antiquaries* Opinion, joyned with *matter* of *Fact*, upon the *Constitution* of the *House* of *Lords*, Let us see the Opinion of Another concerning the *Origin* of the *House* of *Commons*, backed also by matter of Fact; Sir *Robert Cotton* sayes, The *Victory* at *Evesham*, and the dear *Experience Henry* the Third himself had made at *Oxford*, in the 42 year of his Reign, and the Memory of the many *Streights* his *Father* was driven to, especially at *Runnemede* near *Staues*, brought this *King* wisely to begin what his *Successors* fortunately finished, in lessening

Posthuma, p. 347.

When the Provisions were made.

lessening the Strength and Power of his *Great Lords*; and this was wrought, by searching into the *Regality* they had Usurped over their peculiar *Soveraigns*, and by weakning that hand of power which they carryed in *Parliaments*, by Commanding the *Services* of many *Knights*, *Citizens*, and *Burgesses* to that *Great Council*.

These were the Reasons why those *Kings* followed *Monforts Pattern*, to secure themselves against the *Tumultuous*, *Insolent*, and *Seditious Practices* of the *Barons*.

And, as according to the Opinions of these Great Antiquaries, these new *Constitutions* of *Parliaments* had their *Origin* from the *Kings Authority*. So from the same Authority and Time, it was, that this most *Excellent great Council* received its *perfection*, and became exactly *fitted* for the *Government* of these *Nations*, as it seems to be very evident from these following *Records*.

Sum. Parl. 18 Edw. 1.

Edwardus *Dei Gratia Rex* Angliæ *Dominus* Hiberniæ, *& Dux* Aquit. Vic. Weſtm. *ſalutem. Cum per Comites, Baronet, & quoſdam alios de Procerib Regni noſtri nuper fuiſſemus ſuper qu buſdam ſpecialiter requiſiti ſuper quib tam cum ipſis quam cum aliis de C mitatibus Regni illius Colloquium habe volumus & tractatum, tibi præcipim quod* duos *vel* tres *de diſcretioribu ad laborand. potentioribus* Militibus Com. prædicto *ſine dilatione* eligi *& eos ad nos uſque* Weſtm. *venire faci ita quod ſint ibidem a die Sancti* Johan Bapt. *prox. futur. in tres ſeptimana ultimum cum plena poteſtate pro ſe & t Communitate Com. prædicti ad conſulend & conſentiend. pro ſe & communitate hi* hisque Comites, Barones, & Proc res *prædicti tunc duxerint concordand & habeas ibi hoc breve.* T. *me ipſo apud* Weſtm. 14 *die* Jun. *anno Regni noſtri* 18.

Cl. 22 Edw. 1, m. 6. Dorſo. *De Militibus Eligendis & Mittendis ad Conſilium.*

Rex Vic. Northumbr. *Salutem. cum Comitibus, Baronibus & cæt Magnatibus de regno noſtro ſuper qu buſdam negotiis arduis nos & idem r num noſtrum contingentibus, in Cr Sancti Martini prox. futur. apud Weſt colloquium habere volumus & tractat*

Tu

Tibi præcipimus quod eligi facias **Duos Milites** *de diſcretioribus, & ad laborandum potentioribus de Com. prædicto, & eos ad nos uſque* Weſtm. *venire facias. Ita quod ſint ibi in Craſtino prædicto, cum plenâ poteſtate pro ſe & totâ Communitate, Com. prædicti, ad conſulend. & conſentiend. pro ſe & Communitate illâ,* **his que** Comites, Barones, & Proceres prædicti concorditèr Ordinaverint *in præmiſſis. Et ita quod pro* defectu poteſtatis, *hujuſmodi* idem negotium *infectum non remaneat, & habeas ibi hoc. Breve. Teſte* Rege *apud* Weſtm. 8 *die* Octobr.

Conſimiles Litera ſingulis Vice-comitibus Angliæ, T. *ut ſupra.*

Rex *Vic.* Northumberl. *Salutem. Cum nuper tibi præciperimus quod* **Duos Milites** *de diſcretioribus & ad laborandum potentioribus ejuſd. Comitat. de conſenſu ejuſdem eligi. Et Eos ad nos uſque* Weſtm. *in Craſt. Sancti Martini prox. futuro, cum plenâ poteſtate pro ſe & totâ Communitate ejuſd. Com. venire faceres, ad conſulend. & conſentiend. pro ſe & Communitate illâ his qua* Comites, Barones, & Proceres *de regno Noſtro in dicto Craſtino ordinabunt, Tibi præcipimus firmiter injungentes quod præter illos Duos Milites Eligi facias alios* **Duos Milites** Legales & *ad*

Pro Rege de aliis Militibus cum prioribus intendendis ut ſupra.

The King in this Age not confined to a certain number of Knights.

laborandum potentes & eos, unà cum dictis Duobus Militibus *usq;* Westm. *venire facias, ita quod in dicto Crastino sint ibidem ad audiend. & faciend. quod eis tunc ibidem* plenius injungimus. *Et hoc nullo modo Omittas. Et habeas ibi hoc breve. Teste Rege apud* Westm. 9 *die* Octobris.

Eodem modo Mandatum est Singulis Vicecom. Angliæ *Mutatis mutandis.* T. *ut supra.*

Cl. 28 Ed. 1. m. 3. Dors.

Rex. Vicecom. Cumberl. *Salutem, Cum nuper pro communi utilitate Populi Regni nostri concesserimus, quod Charta de Foresta in singulis suis Articulis firmiter observaretur, assignando quosdam de fidelibus nostris in singulis Com. ejusdem Regni in quibus Foresta nostra existunt ad perambulationem in iisdem Foresiis faciend. Ita quod perambulationem illam distinctè & aperte factam ad Nos, antequam aliqua executio, vel aliquid aliud inde fieret, reportarent, & quod Juramentum nostrum, jus Coronæ Angliæ, rationes, & calumpniæ nostræ nec jus rationes & calumpniæ aliorum omnium salvæ forent. Nos licet dicti* fideles *nostri nunc primo ad Nos detulerint quod fecerint in negotio memorato, quia tamen* Prælati, Comites, Barones *& Cæteri* Magnates *dicti regni in quorum præsentiâ, nostras & aliorum*

Edw. I. began his Reign, Nov. 16. 1272.

proponi

proponi, & audiri volumus rationes, & de quorum Consilio in eodem negotio, prout aliàs diximus, intendimus operari; Maximè cum ipsi ad observand. & manutenend. jura regni & coronæ prædictæ una nobiscum juramenti vinculo sint astricti, juxta latus nostrum tunc temporis non fuerunt: ac pro eo similiter, quod illi qui suas rationes, quatenus illud negotium eos tangit proponere habebant, inde præmuniti non erant; eidem negotio, sine ipsorum Consilio finem imponere non potuimus bono modo: Et quia negotium illud quantum possumus cupimus maturari ita quod per nos non stet quin absque ulterioris dilationis incommodo effectum debitum sortiatur; volentes cum Prælatis, Comitibus Baronibus & Magnatibus *supradictis, ac aliis de* Communitate dicti Regni, *Super hoc & quibusdam aliis arduis negotiis, nos & statum Regni prædicti tangentibus habere colloquium tractatum. Tibi præcipimus firmiter injungendo, quod venire facias coram nobis ad* Parliamentum *nostrum* apud Lincoln, *in* Octab. Sancti Hilarii *prox. futur.* **duos Milites** *de Balivâ tuâ;* **Illos** *videlicet qui pro Communitate Com. prædict. ad Parliamentum Nostrum ultimo præteritum per præceptum nostrum venerunt: Et etiam de qualibet* Civitate *infra* Balivam *tuam* **eosdem Cives**, *& de quolibet* Burgo **eosdem Burgenses** *qui ad* prædictum Parliamentum *nostrum*

ſtrum alias ſic venerunt. Et ſi forte aliquis Militum, Civium aut Burgenſium *prædictorum* **mortuus** fuerit *aut infirmus, per quod ad dictos diem & locum venire nequeverint, tunc loco illius Mortui aut infirmi unum alium idoneum ad hoc eligi & ad dictum* Parliamentum *noſtrum venire facias. Ita quod* Milites, Cives, & Burgenſes *prædicti dictis die & loco modis omnibus interſint cum plenâ poteſtate audiendi & faciendi, ea quæ ibidem in præmiſſis Ordinari continget pro communi commodo dicti Regni. Et eiſdem militibus de Communitate Com. prædicti, civibus de civitatibus & Burgenſibus de Burgis prædictis rationabiles* expenſas ſuas *habere facias, in* veniendo *ad dictum* Parliamentum noſtrum, *ibidem* morando *& etiam* redeundo. *Tibi inſuper præcipimus ſicut prius, quod per totam* Balivam *tuam ſine dilatione publice facias proclamari. Quod omnes illi qui terras aut Tenementa habent infra metas Foreſtæ noſtræ in Balivâ tuâ & qui perambulationem in aliquo calumpniari voluerint. Quod ſint coram nobis in Parliamento noſtro prædicto oſtenſur. In hâc parte rationes ſuas & calumnias ſi quas habent, & habeas ibi nomina prædictorum Militum, Civium & Burgenſium & hoc Breve.* T. *Rege apud le Roſe*, 26 *die* Septembris.

Some

Some of the *Returns* Annexed to theſe *WRITS.*

Nomina Militum de Comitat. Lincoln. *Duorum Civium de qualibet Civitate, & Duorum Burgenſium de quolibet Burgo, infra Com. prædict.* viz. *Eorum qui ad Parliamentum ultro præceptum venerunt & ſecuritatem quam michi fecerunt ad veniend. ad Parliamentum. Nunc tenend. Patent in ſequenti. Manucap.* Tho. fil. Euſtachii *unius Militis Com. prædict.* 4. there Returned after his Name: *Man.* Tho. *de* Burnham *alterius Militis*, 4. there liſted. *Man.* Stephani *de* Cranham *unius Civis Civitat. Lincoln.* 4. *Man. unius Burgenſium de Grymsby*, 4. *Alterius Burgenſ.* 4. there named. *Lincoln.*

Milites *Electi*, *Petr. de Dennardeſton nunc electus eſt* loco Johannis *de* Bisbake, *qui* infirmus eſt *qui Manucap.* per duos. Johannis de Peyton manuc. *eſt per* 2. *Suſſ.*

Eligi in pleno Com. Glouc. *feci* loco unius Militis gravi infirmitate detent. *alium Militem nomine* Richardi *de* Croupes per *Aſſenſum ipſius Comitatus*, &c. *Glouc.*

Robertus

Bucks. Robertus Pogers Miles, *qui ad* Parliamentum *ultimo præteritum venit* **infirmus** *est, in* **loco** *ipsius* Roberti, Gerardus *de* Braybroke *Miles electus est, & manucapitur per* 4. there returned. *Burgenses* 2. *de Agnundesham, qui ad ultimum Parliamentum venerunt, Manucap. per* 4. *Manucaptors* for either. Johannes de la Lude Burgensis Wycumbe electus est **loco** Stephani *Ayet, qui fuit ad ultimum Parliamentum, pro eo quod idem* Stephanus **infirmus** est: *Manuc. pro* 4.

Devon. *Quia* Reginaldus *de* Ferrers & Robertus Beaupill *Milites, qui alias fuerunt ad Parliamentum per Electionem Com. non sunt potentes ad laborand. ad præsens, Electi sunt loco eorum* Henricus *de* Ralegh & Nicholas *de* Kyrkton, who found 4 *Manucaptor* apiece there returned.

Exon. *Nomina civium* Exon. Hen. *de* Bokwell, Johannes Farthein, **loco** Nicholai Page, *qui impotens est.*

It

It is commonly Storied (but Erroneouſly) That this whole *Parliament*, or at leaſt the Temporal Lords and the Commons, Wrote to the *Pope*, concerning the Juriſdiction and Superiority of the Kings of *England* over the Kingdom of *Scotland*. But it cannot be ſo, for this *Parliament* Met on the *Octaves* of *Hillary*, or the 20th of *January*, and ſate but Eight dayes; The Writs for the Commons Expences bear Date, *January* 30th of the ſame year, and the Letter to the *Pope*, Signed by the Temporal Lords, for themſelves, and the whole Community of the Kingdom of *England*, is Dated *Febr.* 12 next following at *Lincoln*, after the Commons had been diſcharged 14 Dayes. So that it ſeems the Barons ſtill continued to ſtile themſelves the Community of *England*, and did ſtay and Diſpatch Buſineſs, after the Commons were Diſmiſſed, according to the Tenor of the following *Proclamation*.

Puis

Puis apres le 21 jour de Marz fu fait une crie par commandement le Roi en ceſtes paroles.

33 Edw. 1. Rayleys Placita Parl. fol. 241.

ERceveſqs, Eveſqs & autres Prelatz, Countes & Barons Chivalers des Countez, Citizeins & Burgeys & autres genz de la commune qe cy ſont venuz al mandement noſtre Seigneur le Roy a ceſt Parlement, le Roy les mercy mult de lour venue & vuet qe quant a ore qu'il retornent en lour pais; Iſſint qu'il renneignent preſtement & ſannz delai quele houre qu'il ſoient autre foiz remandez ſauve les Eveſqs Countes & Barons Juſtices & autres qui ſont du Conſeil noſtre Seigneur le Roy qe ceux ne ſen alient ſannz eſpecial conge du Roy. Et ceux qui ount a buſoigner qe ceux demorgent a ſiwre lour buſoignes. Et les Chivalers qui ſont venuz pur les Countez., & les autres qui ſont venuz pur les Citez & les Burghs ſiwent a Sire Johan de Kirkeby & il lour fra avoir brefs davoir lour deſpenſes en lour pais. Et lavantdit Johan de Kirkeby par la reſon de la Crie avantdite les nonns de Chivalers qui vindrent pur les Countez & les nonns des autres qui vindrent pur lez Citez & Burghs livera au Chanceler, & fiſt crier qe touz y ceux quy vouſiſſent brefs ſiwre de lour deſpens ſicome deſus eſt dite ſiwiſſent illoqes pur lour brefs.

Rex

Rex Vic. Ebor. Salutem. *Præcipimus tibi firmiter injungentes, quod* illos Milites, Cives, & Burgenſes *de Balliva tua quos nuper ad præſens Parliamentum noſtrum apud* London *inchoatum de mandato noſtro venire feciſti, & qui* ad eodem Parliamento certis *de cauſis* receſſerunt, *vel* alios *ad hoc* idoneos *loco ipſorum ſi* ad hoc *vacare non poſſint, uſq;* Weſtm. *ad idem* Parliamentum *quod ibidem duximus continuandum, venire facias. Ita quod ſint ibidem in craſtino Sancti Martini prox. futur. ad ultimum cum ſufficienti poteſtate* Comitatus *tui &* Civitatum & Burgorum *prædictorum ad conſentiendum,* &c. *Teſte Rege apud* London 11 *Die* Octobris.

Cl. 5 Ed. 2. m. 26. Dorſ.

A Precept to the Sheriffs to ſend again ſuch Members as left the Parliament, or to chooſe others in their ſtead.

Memorandum quod die Lunæ *prox. ante feſtum decollationis* Sancti Johannis Baptiſtæ, *Anno Regni* Regis Edwardi *fil. Regis* Edwardi Sexto. *Dom. Rex apud* Weſtm. *præcepit quod* Milites, Cives & Burgenſes *qui ad Parliamentum Regis ibidem ſummonitum convenerant pro* Communitatibus, Civibus, & Burgis Angliæ *ad* propria remearent. *Ita quod* reverterentur *ibidem in* Craſtino Sancti Michaelis *prox. futur.* ſub. pœnâ *quæ decet.* T. *Rege apud* Weſtm. 28 *die* Auguſti.

Cl. 6 Ed. 2. m. 27. Dorſ.

The King Prorogues, or Adjourns the Houſe of Commons.

And he puniſhed the Members for Abſence.

Rex

Cl. 20 Ed. 2. m. 4. Dorſ.

A Prorogation before Meeting of the Parliament.

Rex. *Vic.* Northumb. *ſalutem. Licet nuper ſuper diverſis & arduis negotiis nos & ſtatum Regni noſtri tangentibus* Parliamentum *apud* Weſtm. *in Quindena Sancti* Andreæ *prox. futur. tenere ac ibidem per* Iſabellam Reginam Angliæ *Conſortem noſtram chariſſimam, & per* Edwardum *filium noſtrum primogenitum*, Cuſtodem *ejuſdem Regni, nobis extra idem Regnum tunc agentibus, atque Prælatos, Proceres & Magnates Regni prædicti, haberi voluiſſemus* Colloquium *& tractatum. Tibi præcipimus quod de communitate Com. tui* duos Milites, *& de ſingulis Civitatibus duos* Cives, *& de ſingulis* Burgis duos Burgenſes venire *faceres ad diem & locum prædictos. Ita quod dicti Milites a Communitate dicti Com. & dicti Cives a Communitatibus dictarum Civitatum, & prædicti Burgenſes a Communitatibus Burgorum prædict. plenam & ſufficientem haberent poteſtatem ad conſentiendum hiis quæ tunc ibidem de communi Conſilio Regni noſtri contigeret ordinari.* Quia *tamen quibuſdam de cauſis neceſſariis & utilibus prædicta* Parliamentum *& Tractatum* uſque *in craſtino Epiphanie Domini prox. jam futur. apud dictum locum* Weſtm. *tunc tenend. duximus prorogand. Tibi ſignificamus quod prædictos Milites, Cives & Burgenſes ad dictam quindenam apud dictum locum* Weſtm. *ex cauſa Parliamenti*

liamenti & tractatus prædictorum accedere non oportet & hoc *eis* ſcire facias *ex parte noſtra. Tibi inſuper præcipimus, quod* prædictos Milites, Cives & Burgenſes venire facias *in dicto craſtino apud dictum locum* Weſtm. *cum ſufficienti poteſtate ſicut prædictum eſt. Et habeas ibi nomina prædictorum Militum Civium & Burgenſium, & hoc breve, & hoc nullatenus omittas. Teſte* R. *apud* Ledbury, 3 Die Decemb.

Eodem modo mandatum eſt ſingulis, Vic. per Angl. ſub eadem data.

Quod de Comitatu tuo duos Milites, &c. *de diſcretioribus & probioribus Militibus, Civibus & Burgenſibus, & ad laborand. potentioribus,* Qui non ſint placitatores querelarum manutentores *aut* ex hujuſmodi queſtu viventes, &c. *ſed homines valentes & bonæ fidei & publicum commodum diligentes eligi,* &c. *ut propter improvidam electionem Militum, Civium aut Burgenſium prædictorum dicta negotia noſtra infecta non remaneant.* T. R. *Apud* Weſtm. xxv. *Die* Novembr. Cl. 24 *Edw.* 3. p. 2. m. 3. To all Sheriffs in *England.*

R Edwardus

Bundel of Writs of Summons, 26 *Edw.* 3. with the Returns indorsed.

Edwardus *Dei Gratia*, *Rex* Angl. & Franc. & *Dominus* Hiberniæ Ballivis *Villæ de* Sancto Botho *salutem*. *Quia* pro magnis, & urgentibus negotiis & novis subitis *ad nos perlatis* nos & statum *ac* jura Regni nostri Angliæ summe concernentibus *super quibus festinum & providum oportet ordinari remedium cum* Prelatis Magnatibus & Proceribus *ac aliis fidelibus nostris dicti regni nostri apud* Westm. *in Crastino Assumptionis beatæ Mariæ prox. futur.* colloquium *habere volumus & tractatum*. *Vobis præcipimus firmiter injungentes quod* unum Burgensem *de* provectioribus & magis expertis Burgensibus *ejusdem* Ville *sine dilatione eligi & ad dictos diem & locum venire fac. Ita quod* idem Burgensis pro se & communitate villæ *prædictæ* plenam & sufficientem potestatem *habeat ad tractand. consulend. & consentiend. his quæ tunc divina favente clementia* de communi consilio *contigerit* ordinari *super negotiis antedictis, & ut homines ab ista* occupatione autumpnali *quo minus possumus retrahamus* unum tantum Burgensem *de* dicto Burgo *ad* dictum consilium mittend. habere volumus ista vice. *Et habeatis ibi nomen prædicti* Burgensis *hoc breve. Nos de die receptionis præsentium*

One Burgess only Summoned.

ſencium & per quem vobis delate fuerint certificantes tunc ibidem. T. *me ipſo apud* Weſtm. xx. *Die* Jul. *anno regni noſtri* Angl. *viceſimo ſexto, regni vero noſtri* Franc. *tertio decimo.*

per ipſum Regem & Conſ.

Conſ. brevia diriguntur villis ſubſcriptis, viz.

MAjori & Ballivis Villæ *Briſtoll.*
Ballivis Villæ Magnæ *Jernemouth.*
Majori & Ballivis Villæ de *Kingſton* ſuper *Hull.*
Majori & Ballivis Villæ de *Lenne.*
Majori & Ballivis Villæ *Southampton.*

Conſimilia brevia diriguntur Civibus ſubſcriptis mutatis mutandis T. *ut ſupra.*

MAjori & Ballivis Civitatis *Ciceſtr.*
Majori & Ballivis Civitatis *Ebor.*
Majori & Ballivis Civitatis *Linc.*
Ballivis Civitatis ſuæ *Norwic.*

Conſimilia brevia diriguntur ſingulis Uic. Angl. *mutatis mutandis* T. *ut ſupra.* *pro* uno Milite tantum.

Bundell of Writs of Summons, 27 Edw. 3. with the Returns indorsed.

Edwardus *dei Gratia Rex* Angl. & Franc. & *Dominus* Hiberniæ *Ballivis Villæ de Sancto Botho. salutem. Quia pro* magnis & urgentibus negociis *nos &* statum regni noſtri Angl. ſumme concernentibus *cum* prelatis magnatibus proceribus & aliis fidelibus *noſtris dicti regni apud* Weſtm. *die Lunæ prox. poſt feſtum Sancti* Mathei *Apoſtoli proximo futur.* colloquium *habere volumus & tractatum vobis præcipimus firmiter injungentes, quod* duos Burgenſes *de* Two Burgeſſes. proviſionibus & diſcretioribus & magis expertis Burgenſibus Ville *prædictæ de aſſenſu ejuſdem* Villæ *ſine dilatione eligi & eos ad diem & locum prædictos venire fac. Ita quod iidem Burgenſes* pro ſe & communitate Ville prædictæ ſufficientem poteſtatem *habeant ad tractand. conſulend. & conſentiend. hiis quæ tunc divina favente clementia de* communi conſilio *contigerit ordinari ſuper negociis antedictis. Et hoc nullatenus omittatis. T. me ipſo apud* Weſt. xv Die Julii, *anno regni noſtri* Angl. vicesimo ſeptimo *regni vero noſtri* Franc. Quartodecimo.

per ipſum Regem & Conſil.

Conſ.

Conſ. brevia diriguntur Burgis ſubſcript.

MAjori & Ballivis *Bedds.*
Majori & Ballivis Villæ *Briſtoll.*
Majori & Ballivis *Coventr.*
Majori & Ballivis *Derb.*
Majori & Ballivis *Exon.*
Majori & Ballivis de *Gippewico*
Majori & Ballivis Villæ *Glouc.*
Ballivis Magnæ *Fernemuth.*
Majori & Ballivis de *Kingſton* ſuper *Hull.*
Majori & Ballivis *Lincoln.*
Majori & Ballivis Villæ *Northampt.*
Majori & Ballivis Villæ *Nottingham.*
Majori & Ballivis *Oxon.*
Majori & Ballivis *Rich.*
Majori & Ballivis Villæ *Salop.*
Majori & Ballivis *Staff.*
Majori & Ballivis *Warr.*

Conſ. pro Civibus mutatis mutand.

MAjori & Ballivis Civitatis *Ebor.*
Ballivis Civitatis *Elienſis.*
Majori & Ballivis Civitatis *Heref.*
Majori & Vicecom. *London.*
Majori & Ballivis de *Norwico.*

Majori & Ballivis de *Welles.*
Majori & Ballivis *Wygorn.*
Majori & Ballivis *Wynton.*

Blunde of Writs of Summons, 27 *E.* 3 with the Returns indorsed.

Edwardus *Dei Gratia Rex* Angliæ, & Franc. & *Dominus* Hiberniæ, *Vic.* **Bedds & Bucks** *ſaultem. Quia pro* **magnis & urgentibus** negociis **nos & ſtatum** regni noſtri Angl. **ſumme concernentibus** *cum* Prelatis Magnatibus Proceribus & aliis fidelibus dicti regni *apud* Weſtm. *die Lunæ prox. poſt feſtum Sancti* Mathei *Apoſtoli prox. futur.* **colloquium** *habere volumus &* **tractatum.** *Tibi præcipimus firmiter injungentes quod* **unum Militem** *cinctum gladio de* diſcretioribus Militibus & *magis* expertis *de* **utroque Com.** *prædictor. aſſenſu eorundem Com. ſine dilatione eligi, & eos ad diem & locum prædictos venire fac. Ita quod* **uterque** eorundem Militum **pro ſe & communitate** Com. *ſui* **plenam & ſufficientem** poteſtatem *habeat ad tractand. conſulend. & conſenciend. biis quæ tunc divina favente clementia de* **communi conſilio** *contigerit* ordinari *ſuper* negociis antedictis. *Et hoc nullatenus omittas.* T. *meipſo apud* Weſtm. **xv.** Die **Jul.** *Anno regni noſtri* Angl. **vicesimo ſeptimo** *regni vero noſtri* Franc. *Quartodecimo.*

But one Kt. for a County, when two Burgeſſes, &c.

Conſ. brevia diriguntur Vicecom. Ang.

Rex

Rex Vic. Kanc. *&c. Tibi præcipimus firmiter injungentes, quod de Com. tuo duos Milites, gladiis cinctos & de qualibet Civitate com. illius duos Cives, & de quolibet Burgo duos Burgenſes, de diſcretioribus & probioribus Militibus, Civibus & Burgenſibus, Com. Civitatum & Burgorum eorundem, & de elegantioribus perſonis eligi,* &c. *Ita quod,* &c. *ſeu propter improvidam electionem Militum, Civium, aut Burgenſium prædictorum dicta negotia noſtra infecta non remaneant,* &c. *Et habeas ibi nomina prædictorum Militum, Civium & Burgenſium, & hoc breve.* Et ſcire facias eiſdem, quod propter arduitatem negotiorum prædictorum & celeriorem expeditionem eorundem volumus primo die Parliamenti perſonaliter intereſſe, per quod noluimus, *nec* intendimus **aliquem** ad dictum Parliamentum **ſummonitum** *quin* **eodem** primo die perſonaliter interfuit, habere ullo modo **excuſatum**, *nec* **excuſationem** *inde* **admittere** aliqualem. *Teſte* R. *Apud* Weſtm. 5. *Die* Decembr.

Cl. 31 Edw. 3. m. 2. Dorſ.

Abſent Members of the Commons Houſe made their *Excuſe* to the King.

Conſimilia brevia dirigunturſingulis Vicecomitibus per Angliam, necnon Henrico *Duci* Lancaſtr. *vel ejus locum tenenti ſub eadem data.*

Rex Vic. Kanc. *ſalutem. Cum Comites, Barones, Magnates, & Communitas Regni noſtri* Angliæ *in ultimo Parliamento noſtro apud* Weſtm. *tento in auxilium expenſarum quas tam pro ſalvatione & defenſione Regni noſtri* Angliæ *& Navigii ejuſdem Regni quam pro expeditione guerræ noſtræ* Franciæ *nos facere oportebit, conceſſerint nobis quoddam ſubſidium viginti & duorum ſolidorum & trium denariorum levand. & percipiend. de qualibet Parochiâ dicti Regni. Ita quod quælibet Parochia majoris valoris auxilians ſit & contributoria alteri Parochiæ minoris valoris juxta ratum, ea intenſione quod dictum ſubſidium ad ſummam, quinquaginta millium librarum ſe attingeret. Et quia habita ſuper levatione ſubſidii prædicti per nos & Conſilium noſtrum deliberatione diligenti, videtur eidem Conſilio, quod dicti viginti & duo ſolidi, & tres denarii de qualibet Parochiâ dicti Regni ſic levandi ad dictam ſummam quinquaginta millium librarum per multum non attingunt; & ſic veriſimiliter formidatur, quod nobis de dicta ſumma quinquaginta millium librarum ad terminos ſtatutos juxta intentionem conceſſionis prædictæ reſponderi non poteſt. Nos volentes plenius informari ſuper declaratione intentionis conceſſionis ſubſidii prædicti, qualiter levatio ejuſdem celerius fieri poſſit &* conſiderantes, quod oneroſum eſſet omnes Magnates & Milites

Milites, Cives & Burgenſes, qui ad dictum Parliamentum noſtrum, de mandato noſtro venerant, iterum ex hac cauſa conveniri; ordinavimus ut laboribus parcatur & expenſis, cum quibusdam eorundem Magnatum, Militum Civium & Burgenſium prædictorum ſuper præmiſſis Colloquium, habere & Tractatum. Tibi præcipimus firmiter injungentes, quod Thomam Apuldrefeld, unum Militem Com. prædicti, Edmundum Hoyne unum Civium Civitatis Cantuar. & Johan. Lynchenfeld unum Civium Civitatis Roffen, qui pro communitate Com. & Civitatum prædict. ad dictum Parliamentum de mandato noſtro venerunt, ſi ſuperſtites fuerint, alioquin ſocios ſuos qui cum eis de veniendo ad Parliamentum prædictum electi fuerunt, præmunire facias; quod ipſi omnibus aliis prætermiſſis & quacunque excuſatione ceſſante, in propriis perſonis ſuis ſint apud Wynton in Octabis Sanctæ Trinitatis prox. futur. ad informand. Nos & dictum Conſilium noſtrum, ſuper modo & forma quibus nobis de dicta ſumma quinquaginta millium librarum celerius & commodius juxta intentionem conceſſionis prædictæ poterit reſponderi. Et interim diligenter inquires de numero Eccleſiarum Parochialium, & Capellarum & Prebendarum in Com. prædicto, tam in manibus ſecularium

One Knight for a County, one Citizen for a City, one Burgeſs for a Burgh, and thoſe named to the Sheriff,

rium quam Religioſorum exiſtentium, & Nobis de nominibus eorundem, ac de nominibus Militis & Civium prædictorum ad dictos diem & locum diſtincte & aperte certifices hoc breve Nobis remittens. Et hoc nullatenus omittas. T. R. *apud* Weſtm. 27 *die* Aprilis.

Vic. Surr. *de præmuniendo* William *de* Cobeham Militem, Thomam Dane Burgenſem *de* Suthwerks, Petrum Somere Burgenſem *de* Guildeford, & Johan. Bodekesham Burgenſem *de* Blechynlegh.

Conſimilia brevia diriguntur ſingulis Vicecom. per Angl. & Burg. *ſub eadem data, viz.*

In the ſame manner Writs were directed to all the Sheriffs in ENGLAND.

Rex Vic. Surry *ſalutem. Quia ut accepimus, tu* **Thomam Camoys** *Chivaler, qui Bannerettus eſt, ſicut quamplures anteceſſorum ſuorum exiterunt ad eſſendum* unum Militum *venientium ad Proximum* Parliamentum noſtrum *pro* **Communitate** Comitatus prædicti, *de aſſenſu ejuſdem Comitatus, elegiſti: Nos advertentes, quod hujuſd. Baneretti* ante hæc tempora, *in* Milit. Comitat. ratione alicujus Parl. eligi, minime conſuev. ipſum *de* officio Militis *ad* dictum Parliamentum *pro* communitate Comitatus *prædicti venturi, exonerari volumus; Et ideo tibi præcipimus, quod* quendam alium Militem *idoneum & diſcretum gladio cinctum* **loco ipſius Thome** eligi, *& eum ad* diem & locum Parliamenti prædicti venire facias. *Cum plena & ſufficienti poteſtate ad conſentiend. biis quæ in Parliamento prædicto fient, Juxta tenorem primi brevis noſtri tibi pro electione hujuſmodi Militum directi; & nomen ejus nobis ſcire facias.*

Cl. 7 R. 2. m. 32.

The King Diſchargeth one of the Knights of *Surrey*, becauſe he was a Banneret, and directs the Sheriff to Chooſe another.

cias. Teste Rege apud Westm. *o*
vo die Octobris.

Consimile Breve dirigitur Vic. S
rey *pro* Jacobo Berners
qui est de retinentia Regis
familiaris & unus Militum C
meræ Regis. T. R. *apud* Wes
18 *Die* Octob.

T H

THE GLOSSARY.

Feudal Law, Knights-Fees, Tenure by Knights, or Military-Service, Knights Milites, Fee-Farm, Frank-Fee, &c.

BY the Original *Laws*, *Grants*, and first Inſtitution of *Beneficia*, or *Fees* (as they were afterwards called) they were *revokeable* at the *Will* of the *Lord*, *Patron*, or *Donor*, when he pleaſed. And at any time, when he would, might *take* them *away* from the *Beneficiary*, *Feudatary*, or *Poſſeſſor*. Afterwards they were granted for a **Year**, and then for the *Life* of the *Feudatary*, or *Vaſſal*. When in proceſs of time they became **Succeſsive**, and paſſed to the *Sons* of the *Poſſeſſor*; but ſo, as if he had more Sons then one, the *Lord* gave the *Fee* to *which* he pleaſed: From hence, by degrees, they became **Hereditary**, and paſſed alſo to *Women*; But, as at firſt they were given, ſo they alwayes remained

Spelman's Gloſſary, fol. 565. col. 1. from the Books of the *Feudal-Law*.

Fees, in proceſs of time became *Succeſſive*.

And *Hereditary*.

mained under *Conditions* of **Fidelity**, **Fealty**, or *faithfulneſs* to the *Lord*, and
Ibid. **Military Service** when he commanded it; And anſwerable to theſe Conditions there were two wayes of loſing Fees, *Breach* of *Truſt*, which was called **Felony**, and varied according to the difference of places, in ſome for *leſſer*, in others for *greater* **ingratitude**, the **Fee** was *forfeited*; and for *want*, or *defect* of **Service**, the *Fee* or Land given for it, *returned* to the *Lord*, and in caſe of an *Infant*, or *Woman*, who were neither of them *fit* to *perform* Military **Service**, yet it was thought unjuſt they ſhould loſe their *Fee* or *Eſtate*. Therefore they or their *Eſtates* were in
Wards. **Guard**, or **Ward** to the *Lord*, and were called his **Wards**, and the **Service** by him provided for, until the *Male-heir* was of *Age*, and *trained* up to, and made *fit* for the *Service* he was to perform: Or the **Woman** by his *conſent*
Marriages. had taken ſuch a **Husband**, of whoſe *fidelity* he was aſſured, and by whom ſhe might perform the *Service*, which by *virtue* of her *Fee* ſhe was bound to. But if the *Heirs* or *Succeſſors* were of
Hottom. *in verbo Relevium.* Age, they paid *Reliefs*, which in *Feudal Latin* were called **Relevia**, **Relevamenta**, *Relevationes*, becauſe, by the

they took up again the *Fees* or *Lands*, which were faln by the *Death*, or *Forfiture* of the *Feudatary*. Sometimes they were called *Introitus*, or *Ingressus*, and they were but an *Honorary Gift* to the *Lord* by his *New Vassall*, for his *Entry* upon his *Land* or *Fee*, perhaps not much unlike that of our *Copy-holders Fine*.

The Feudal Tenure in most European Nations.

This Feudal Law, obtained in most *Nations* of *Europe*, and in **Normandy** was in its *full vigor* at the time of the coming over of the **Conqueror**, but afterwards *grew* more *milde* and *qualified*, as also the *Tenure* its self, a perfect *description* of which, with all its incidents, of **Homage**, **Relief**, **Ward**, **Marriage**, **Escuage**, **Aydes**, &c. are to be found in the **Grand Customer**, *Cap.* 29. 33, 34, 35. and although there were **Military** *Fiefs*, or *Fees*, here in the *Saxon times*, yet not in *such manner* as after the *Conquest* established here by **William** the **Conqueror**, and according to the *usage* in **Normandy**; when, as it appears by **Domes-day-Book** in *every County* he *divided* most, if not all the *Land* of *England* amongst his **Normans** and *Followers*.

Spelm. *Gloss. fol.* 68. *col.* 2. *fol.* 218. *col.* 1. Seld. *Tit. hon. Edit. in Quarto, Pa.* 300, 301. *Bacons Elements Trea.* 2. *p.* 30. Som. *Gavelkind, in append. Script.* 21. *p.* 210

But, beſides the *two former wayes* of **Forfeiture**, there were many others which * Sir *Henry Spelman* hath collected from the *Feudiſts* and **Feudal Laws**, and ſome of them do here follow. Originally, all **Vaſſals** held their *Lands* at the Will of the *Lord*, and whether they were *Delinquents* or not, he might, at his pleaſure, take them from them. In *point* of **Tenure** they were much like our Ancient *Copy-holds*, at meer Will; and in this of **Forfeiture** they much reſembled them, and thoſe alſo at this day.

*Gloſſar. fol. 214, 215.

Vid. Hott. *de Feud. Diſſ. c. 38. col. 886. D. E,* &c.

It was a *Forfeiture*, if *thrice ſummoned* to the *Lords Court*, they neglected, or refuſed to come and take up their *Lands* and do *Fealty*. If they *refuſed* to do their *Service*, or *denyed* their *Tenure*, it was a *Forfeiture*. If they *ſold* their *Eſtates* without leave of the *Lord*, or if they *ſold* it by any other title then they had themſelves, it was a *Forfeiture*. If they did any thing againſt their *Oath* of *Fealty*, if they adhered to their *Lords Enemies*, or did *forſake* him in time of *War*, or *danger*, all theſe were *Forfeitures*. If they *committed* any outragious *wickedneſs*, which was *called* **Felony**, as **Murder**, **Robbery**, **Burning** of Houſes, **Rape**, &c. and which was no

Several ways of forfeiting of Fees.

Treaſon,

Treason, this likewise was a *Forfeiture* of their *Lands* and *Estates* to the *Lord* of the *Fee*. And by committing *Felony*, and the *Non-performance* of the most of those things, upon Condition the *Tenents* at this *day forfeit* their *Lands*, and they *escheat* to the *Lord*, some by *presentment* of the *Homage*, *others* immediately where the *fact* is *notorious*. It will make much to the further understanding of *Knights Fees*, and the *Forfeitures*, and other *incidents* belonging to them, to give a brief *Account* of the *Institution* of *Manners* here in this *Nation*, as I find it in our *Learned Glossarist*, who sayes, it was a Norman *word*, and brought from thence, and what the *Saxon* called a *prædium*, or *villa*, their possessions in Land, with the injoyment of *Soc*, *Sac*, *Tol*, *Team*, and other *priviledges* the Normans called Manners *à Manendo*, because *such* possessions were *Ordinarily* the *Seats* of the *Lords*. The *Saxon Jurisdictions* had their *Origin* from the *grants* of their *Kings*, but Manners had their beginning from Feudal *Law*, or *right*; For whoever could dispose of *Fees*, might justly *give Laws* to their *Vassals*, erect *Courts*, and take upon them all other *Priviledges pertaining* to a Noble

Coke *Comment. Copyholder, Sect.* 57, 58. Kitchin *Tit. Copy-holder.*

Fol. 389.

The first Institution of Manners.

Manner from whence derived.

They were Feudal.

How they were Instituted.

Fee. He further sayes, at the beginning, this was the *course* of instituting Manners; for the most part, different *Lords* possessed the *Territories* of every *Town*, or *Village*, and *cultivated* it by their *Servants*, *Vassals*, and *Husbandmen*, for at that time there were, living in the Country, *only* Military *Men*, *Labourers*, or *Husbandmen*. First, the *Lord* designed the place of his own *habitation*, and annexed to it a plentiful *portion* of *Land* for the *maintenance* of his Family, which are yet called

Ibidem.

Terre Dominice, *Demesn Lands*. Another share he gave to his *Vassal*, or *Vassals*, for their *Ayd*, and *Assistance* in

For Maintenance of their Horse and Armes.

War, and they were called *Knights Fees*, or *Military Fees*, which, if they were not sufficient for the maintenance of one *Soldier*, yet according to the quantity of Land they injoy'd, they contributed such a share as was agreed for; *half*, a *third*, a *fourth*, or *less part*, according to the *smallness* of the *portion* of the *Fee* granted towards the

Ibidem.

Lords Military *Expences*. A *third part* he distributed to such as performed all *rustick*, and *servile* works, *repayred* his *Houses*, ploughed, and sowed his *Land*, reaped his *crop*, carryed it into *Barn*, threshed it, digged, hedged,

Base Tenure.

and

and took care of his *Flocks* and *Fields*. The *Precincts* of this *diſtribution* were *governed* by ſuch **Laws** as the *Lords* impoſed; And as all their *Eſtates* aroſe from his *beneficence*, ſo they depended on his *Will*; hence ſo many *ſeveral* **Cuſtoms** in *ſeveral* **Manners**. The *Lords* **Houſe** was the *Aula*, **Hall**, or **Court**, and all the *Tenants*, if need required, were bound to attend there every three weeks, but generally at the *Feaſt* of the **Annuntiation**, and St. **Michael**, from whence theſe *Courts*, kept at thoſe times, were called **Curie generales**, or *General Courts*. Theſe *Lords* of *Manners*, or *ſmall Baronies*, held either in **Capite** of the *King*, or moſt commonly of other Great *Barons*, as of their *Honors*, or *Heads* of their *Baronies*, by the *ſame* **Tenures**, and under the ſame **Forfeitures**, and theſe in like manner of the *King* in *Capite*; for by the **Feudal** *Law*, *Sub-Fees* were to be given, and received according to the *Laws* of the firſt *Inſtitution* of the *Capital*, *Royal*, or Great *Fees*, which held immediately of the *Prince*; and therefore as the Inferior, or Loweſt *Lords** had their *Courts* for Adjuſting all *Matters* within the *Juriſdiction* of their *Manners*, ſo had thoſe of a *Mid-*

Whence ſeveral Cuſtoms in ſeveral Manners.

Grand Cuſtom of Normandy, *Chap.* 34. 35. 53. *and every where in our Ancient Lawyers and Hiſtorians.*

Hott. *de Feud. Diſp. c.* 10, 830. *D. They might ſtraighten, but not inlarge the Condition of the Fee. Ibidem.*

* *Ibidem, c.* 53.

dle rank, within their *Jurisdiction*, for such of these inferior *Lords*, or others, as held of their *Baronies*. And likewise the *Capital Barons* had their *Courts* within their *Jurisdiction*, in which, all, or most Matters relating to, and arising between their *Tenents*, were *ordered* and *decided*; And they were only held at the *Chief Seats* of their *Honors*, or *Baronies*, but perhaps all over *England* where they had any considerable Lands or Possessions. As the *Honor* of *Richmond*, *Honor* of *Gloucester* and *Clare*, *Dutchy* of *Lancaster*, &c. have at this day their several Courts for determining Controversies and Suites, within their Jurisdiction, of matters of small value. Lastly, these great *Barons* were within the *Jurisdiction* of the *Kings Court*, which was then the *Exchequer*, where all Pleas concerning their *Baronies* were terminated: The Conqueror gave to some of his greatest Followers whole *Counties*, and to some two or three *Counties*, with a great proportion of Lands in them, to others some part or portion of a *County*, as *Hundreds*, a greater or a lesser share, who parcelled them out to their *Dependents*, and Friends, and they again to theirs, till at last the *Soldiers*, and *Ordinary* Men,

Lords of Manners ought suit to the Courts of mean Barons.

And they to the Courts of Great Barons on whom they held.

Glanvil, *lib.* 1. *c.* 3. *And Great Barons to the Exchequer, or Knights Court.*

The Lands of England *parcelled out, and distributed by the Conqueror.*

had some proportionable share for their *Services*, though upon hard Conditions, possessing them for the most part as *Feudataries*, and according to the Rules of the *Feudal Law*, which was the *Law* for the most part in *Normandy*, as to Possession and Tenure.

These *Knights Fees* were not all of the same *value*, but some greater, some lesser, according to the *Beneficence* of the *King*, or those that held of him in *Capite*, to their *Tenents* in *Military Service*, or *Sub-feudataries*; some were *scanty allowances*, for their *performances*, and *services*, others very *plentiful*, much more then would make good the *service*; and then by the *Kings Licence* they Let part of those Lands to *Fee-Farm*, so called, because a *Farm-Rent* is reserved upon a grant in a Fee: And *Britton* sayes they were Lands held in Fee, which answered the yearly value. Upon which Tenements, no *Homage*, *Ward*, *Marriage*, or *Relief* could be Demanded without special reservation in Writing; or by the same Licence *changed* part of their *Capite*, or *Knights Service Lands* into *Franke Farmes*, which were *Lands* and *Tenements*, of which, the *Nature* of the

Seldens *Tit. Hon. fol.* 572.

All Manners not of the same extent and value.

Magna Char. c. 31.

Page 164. *b. n.* 4.

Fee-Farms.

Ibidem, a. n. 3.

Frank-Farms or Tenements.

Fee was changed by *Feofment*, from *Chivalrie*, or Military *Service*, for certain *Services* by the year, for which *Homage*, *Ward*, *Marriage*, or *Relief*, or other *Service*, could not be Demanded, that was not contained in the *Feofment*. Hence most of our *Freeholds*, and the *Rents* called *Free-Rents*, due to *Lords* of *Manners*; and hence the Ordinary **libere Tenentes**, which in those dayes were not always *Free-men*; for a *Tenement* changeth not the Condition of a *Freeman*, or *Servant*, or *Villan*. A Freeman might hold pure *Villanage*, and yet remain *Free*, and a Bondman might hold by *Free-service*, and yet be a *Bondman*. *Quia* Tenementum *nihil confert vel detrahit personæ*; for that a *Tenement*, or *Possession*, neither *added* to, or *detracted* from the *Person* of any Man, if Free or Bond, according to his *blood* or *extraction*.

Bracton, lib. 2. c. 8. n. 3.

A Free-Tenement might be by Blood a Bondman.

Ibidem, n. 1.

From these Military *Fees*, or Possessions, the Milites had their *Names*; *Nam Miles* (saies Sir *Hen. Spelman*) *quem* Baronem *vocabant*, *non à Militari cingulo*, *quo Equites creabantur*, *sed à* Militari Feudo (*quo alias possessor & libere Tenens nuncupatus est*) *Nomen sumpsit*. For a *Miles* which was called

Glossar. *fol.* 72. *col.* 1.

Milites, why so called.

a *Baron*, took not his Name from the *Military Girdle*, with which *Knights* were Created, but from the *Military Fee*, by reaſon of which he was otherwiſe called a *Poſſeſſor*, or *Free-Tenent*, and ſo *Cambden*, **Milites** *primo apud nos appellati fuerunt, qui prædia beneficiaria tenuerunt ut Militarent.* They were firſt called with us *Milites*, which becauſe they *went* to *warfare*, had *Lands* given them. Britan. *fol.* 123.

Not but *moſt*, if not all the Great *Barons*, as alſo the *Tenents* in *Capite*, and *ſome* others that held many *Knights Fees* of mean *Lords*, and were *poſſeſſed* of Great *Eſtates*, were actually *Knights*, created by *Ceremony*, that is, they were *Baltheo Militari cincti*, or *Ornati*, Girt by the King with the **Military**, or *Soldiers Belt*, as the *Cuſtome* was in thoſe times, when it was *reputed* a very *great Honor* to be ſo *Knighted*, or *Girt*; and from hence, as well as from their *Fees*, *Barons* were *frequently* ſtiled **Milites**, and *Chivalers*, as *Selden* aſſures us, That in the *Writs* of *Summons* to *Parliaments*, *Pleadings*, and other *legal inſtruments*, moſt regularly the word *Baron*, is wholly omitted, and uſually *Chivaler* ſupplies it, as an *Addition* in the *Parliament* Tit. Hon. *fol.* 571.

Rot. Mag. 20. Hen. 2. *in* Buckingh. &c. Seld. *Tit. Hon. fol.* 574. *Note, the Tenents in Capite are called the Barons of* England *in the Pipe-Rolls, and were the same persons.*

Parliament Writs to the Temporal Barons. And from the *Pipe Rolls* in the time of *Henry* II. he sayes, they had heads *de Scutagiis Baronum* Angliæ, *de exercitu* Walliæ, *& de Scutagiis Baronum qui non abierunt cum Rege in exercitu qui non* Galweiæ, *de Scutagiis Baronum qui non abierunt, nec Milites nec Denarios Miserunt ad Exercitum* Hiberniæ, Galweiæ, Walliæ, That is, of the *Scutages* of the *Barons* of *England*, of the *Army* of *Wales*, of the *Scutages* of the *Barons* which went not with the *King* in the *Army* against the *Scots*, of the *Scutages* of the *Barons*, who went not in, nor sent their *Milites*, or *Money* to the *Army* of *Ireland*, *Scotland*, *Wales*: And sayes further, that under those heads the *Names* of the *Barons* of the *Counties*, where the heads are *placed*, occur together with the *number* of the *Knights* (or *Knights Fees*) for which they paid their *Escuages*; and the same *Kind* of *Tenents* in *Chief*, or *Barons*, are oftimes also in the *Rolls* of the same time indifferently called Milites in heads of the same Syllables, saving that Militum supplies Baronum, which agrees with the use of the Latter Ages, wherein *Miles* and *Chevaler* have been so *proper* and *usual* in the *expression* of them.

them. Thus far *Selden*, whom I have rather cited then the *Rolls* themselves, because with some Men his *Authority* is greater.

But further, That Miles was a frequent *Title* given to our Great *Earls* and *Barons*, take these few Instances, instead of great numbers out of *History*.

Circa Kalendas vero Aprilis *ex præcepto Regis, & totius* Baronagii *consilio, arripuerunt iter transmarinum ad Parliamentum magnum Domini Regis* Franciæ *pro pluribus arduis negotiis,* Regna Francie & Anglie *contingentibus,* Comes Glovern. & Leceſtr. *Dominus* Johannes *Mansel,* Petrus *de* Sabaudia, & Robertus Wallerand Milites, *habentes potestatem componendi & pacem inter eos firmiorem ineundi, si idem Rex* Franciæ *pacta præcederet, ut prælocutum fuerat inter speciales nuntios suos & Regem* Angliæ *inviolabilia satageret conservari.* Mat. Weſtm. *fol.* 366. *n.* 10.

Our Great Earls called Milites.

Simon Comes Leyceſtr. *Hen. filius ejus* Hugo Diſpenſator *Justitiarius* Angl. Petrus *de* Monte fozti, Guliel. *de* Mandevilla, Rad. Baſſet, Roger *de Sancto* Johanne, Walterus *de* Creppings, Guil. *de* Eboraco, & Robertus Treve. *Ibidem,* 395. *n.* 20.

Slain at Eveſham.

Great Barons called Milites.

Tregos. Barones & Milites *prepotentes*; All slain in the Battel of *Evesham*.

Ibidem, 399. n. 50.

Miles Egregius *Dux* Edwardus, said of the *Prince*,

Paris, *fol.* 387. n. 30. *Ibidem*, 396. n. 50.

Defendens omnes Gilbertus *Milites nobiles de* Marchia *quorum supra facta est mentio:* These were, Rogerus de Mortuo Mari, James Audeley, Roger *de* Leiburn, Roger *de* Clifford, Haimo *Le* Strange, & Hugo *de* Turbivile, and *others*, all great and considerable *Barons* in the *Marches* of *Wales*.

Feudatarii

Feudatarii, Fideles.

Feudatarius *Qui* **Feudum** *à Patrono sibi Commissum accepit*, and was the same that *Benefaciarius*, and **Beneficium**, the same that *Feudum*, for *Feudum*, and *Feudatarius* came in use instead of them. He was one that Received *Land* of any *Lord* to do him Service for it, and did him *Homage* and *Fealty* for the Lands he held of him, and *Services* he was to do him. Hottom. in verbis Feud. col. 924. D. Printed 1599.

Fideles *interdum generaliter Dicuntur, qui in Principis alicujus Potestate & Ditione sunt, qui vulgo Subjecti appellantur.* Sometimes they are taken for *Subjects* in General. *Ibidem.*

Interdum specialiter Dicuntur iidem, qui **Vasalli.** *Qui Feudo accepto in Patroni fide & Clientela sunt, vicissimque suam ei certi obsequii nomine fidem astrinxerunt*; sometimes they are the same with *Vassals*, who having received *Fees*, are in the *Retinue* of some *Patron*, or *Lord*, and have pledged their *Ibidem, col. 925. A.*

their *Faith* to do him certain *Services*. In this last sense, as well as in the first, the word **Fideles** often occurs in antient *Historians* and *Records*. Williel-

Malmsb. *fol.* 93. *a. n.* 30.

mo *filio*, Hen. 1. *Cum vix* 12 *annorum esset omnes* **liberi homines**, &c. *Cujuscumque Ordinis & dignitatis, Cujuscunque Domini* **fideles** *manibus & Sacramento se dedere coacti sunt.*

Pat. 15 Johannis, p. 2. m. 2. n. 9.

Rex Baronibus militibus & omnibus **Fidelibus** *totius Angliæ salutem.* These were to hear what the *Bishop* of *Winchester* was to say to them about the releasing the *Interdict*, and that these **Fideles** were the *Kings Tenents* in *Capite*, is clear from the latter part of this *Record*. **Unicuique vestrum**, *si fieri posset, literas nostras super hoc Transmisissemus, sed ut negotium majori* **Festinatione**, &c. The *King* had Writ to them all *particularly*, but that the *Business* required great *haste*.

Cl. 42 Hen. 3. m. 10. Dors.

Rex omnibus Comitibus, Baronibus, Militibus & aliis **Fidelibus** *suis de Com. Ebor.* Northumbr. Cumbr. &c. *salutem. Mandamus Quod prompti sitis & parati cum* **Equis** & **Armis**, &c. These were *Feudataries*, and *Tenents* in **Military** *Service*.

Rex

Rex dilecto & Fideli ſuo Rogero le Bigot Com. Norff. ut cum Equis & Armis & ſervitio veſtro, &c. *Eodem modo mandatum eſt*, to 130 *Barons* and *Tenents* in *Capite*. *Cl.* 47 Hen. 3. *m.* 7. *Dorſ.*

Rex dilectis & fidelibus ſuis Militibus & liberis hominibus de Com. Southampton, Mandantes Rogamus ad nos ſitis cum Equis & Armis, &c. *Pat.* 48 Hen. 3. *m.* 18. *Dorſ.*

Rex Vicecom. Northumbr. &c. *cum dilecti & Fideles noſtri Johannes de Baylol, Petrus de Brus, Radulph. filius Ranulphi & ſocii ſui.* Theſe were *Barons* and *Tenents* in *Capite*. See *Dugd. Baronage, Tome* 1. *Cl.* 50 Hen. 3. *m.* 9. *Dorſ.*

The meaning of this word **Fideles**, as alſo of theſe words *Liberi Homines*, *Libere Tenentes*, &c. is to be known from the ſubject matter where they are uſed, and the words with which they are joyned in Conſtruction, which will give us the true ſenſe of them where ever we meet them.

Folke-

Folke-Mote.

SIr *Hen. Spelman* tells us, concerning the **Folkmote**, That every *May-Day*, yearly, as in an Annnual Parliament, as well the *Chief* of the *Realm*, as the *Biſhops*, *Magiſtrates* and *Freemen* met. The Lay-men were Sworn to defend one another, *Swore Fealty* to the *King*, and to preſerve the Laws of the Kingdom, they conſulted of Common Safety, Peace and War, and the Publick Benefit. As to the time of Meeting, by the words he uſes, he ſhould have taken that out of the *Antiquarie*, of the 35 Law of *Edward* the *Confeſſor*, where it is ſaid, there was alſo a Meeting of like nature for chooſing of Sheriffs, and Herelochs, and other Officers, and Diſpatch of ſome other Buſineſs, which were indeed the ancient *Sheriffs Turns*. But whereſoever he had the latter part of his Deſcription of a *Folk-Mote*, though I have a great veneration for the very Name of Sir *Henry Spelman*, I am ſure it could not be ſo; if we may Relye upon the *Saxon*

n Lawes, Gif Mon on Folces-Gemot Cyninges gerefan ge-yppe Eoſor, and his Eft geſwican will, geſtele on rihtran hand gif he Wege: gif he ne Wage Tholige bis angyldes. If any Man in *Folk-Mot* declares concerning a *Debt* before the *Kings Provoſt*, or *Officer*, and ceaſes from that *Declaration*, to put it into a *righter hand* or way of *Diſpatch*, he ſhall *loſe* his *amends* or *ſatisfaction*. *LL. Alred. c.* 22.

Eac is Ceapmannum geriht tha Men the hi op mid heom Ledath. Gebringan beforan Cyninges Gerefan on Folc-gemote, and gerecce hu Maniga thera syn, e he nimen tha men mid heom, the big Wagon eft to Folc-Gemote to riht Gebringan; e thonne heom Theark sy ma manna up mid heom to hebbanne on heora foze, gerythe symble swa oft swa Theark sy on Gemotes gewyrnysse Cyninges Gerefan. Alſo it is the *Merchants right*, That the Men he carries with him he bring before the *Kings Reve* in *Folkmote*, and reckon how many there are, and then he may take thoſe Men with him, which he may afterwards bring to Juſtice in the *Folk-Mote*, and then if there be neceſ- *Iibdem, LL.* 30.

sity for him to have more Men with him then heretofore, he shall shew them always before the *Kings Reve* in the *Gemote*, or under Testimony of the *Gemote*, so oft as need shall be. These *Folc-Gemots* were held before the *Kings Gerefe*, who we never read was permitted, or had any *Commission* to Treat of *Peace* or *War*, *Publick Safety*, or *Benefit*. Nor is it probable the *Marchants* could bring their Men before such Great *Meetings* only *twice* in a *year*, for they must either lose their *Voyages*, or these *Meetings* must be *called* to take a *view* of every *Marchants Men*, neither of which I think are *probable*, and therefore I take the *Folk-Motes* in the *Saxons* time to be an *inferior Court*, and may be it was the Monthly Court, as this *Law* not very obscurely seems to hint to us. **Ic wille That elc Gerefa hebbe Gemot a ymb Feower wucan and ge don that elc Man sy Folc rihts wyrthe and elc sprec hebbe end.**

LL. Ed. Sen. c. 11.

I will, That every *Reve* have a *Gemot* always about *four weeks* distance, and do, That each Man have **Folc-rigbt**, and that each Squabbe have an end.

And

And we Cwedon be them hlaford leasum mannum. The nan Man nan rihle et begytan ne meg. That Man bude There megthe that hi hine to rihle gehamette & him Hlaford funden on Folk-Gemote. *LL.* Athelstan, c. 2.

And we say, concerning *Lord-lesse* Men, against which no Man can have *right*, That his *Kinred* be commanded to bring him to *right*, and *find* him, *a Lord*, or *fide-jussor*, to undertake for him in the *Folk-mote*.

If any Man turned away his Servant for evil doing, and his Lord had a mind unjustly to undoe him, berecce hine thonne Gif he Mege on Folcgemote. He may *Justifie* himself if he can in the *Folc-mote*. *Ibidem, Apud* Greatanley, c. 1.

All these *Laws* prove the *Folk-mote* to be an *inferior ordinary Court*.

Liberi homines, Liberi Tenentes.

Liberi homines moſt properly were thoſe which held in *Military*, or *Knights Service*, and in this ſenſe of the words, all the *Earls*, *Barons*, *Knights*, and *others*, that held *Knights Fees*, or *part* of *Knights Fees*, were called and eſteemed *Free Men*. Of theſe Free Men there is often mention in *William* the *Conquerors* Laws. *Volumus etiam & firmiter præcipimus & concedimus ut* **omnes liberi** *homines totius Monarchiæ Regni noſtri, teneant Terras ſuas & poſſeſſiones libere ab omni exactione injuſta & ab omni* Tallagio, &c. *ita ut nihil ab iis capiatur niſi* **ſervitium** *ſuum* **liberum**, &c. This was **Military** *Service*, called *Free*, in Reſpect of other *Baſe* Services. *Statuimus etiam & firmiter præcipimus ut* **omnes liberi homines** *Totius Regni, ſint fratres Conjurati ad Monarchiam noſtram defendendam.*

In Selden's *Notes on* Eadm. *LL.* 55.

Ibidem, LL. 59.

Statuimus etiam & firmiter præcipi-

mus

mus ut omnes Comites & Barones, & Milites & Servientes, & universi liberi homines totius Regni habeant & teneant se semper bene in armis & in equis ut decet & oportet, & Quod sint semper prompti & bene parati ad servitium suum integrum nobis Explendum & peragendum cum semper opus fuerit, secundum Quod nobis de feodis debent & Tenementis de Jure Facere. These Liberi homines were the same in all Three Laws. *Ibidem, LL. 58.*

Berault, upon the Customes of Normandy, gives from Coquille a brief Account of Free Fees, and Freemen, or Gentlemen. Sur le declin de l'Empire Romain les Francois (ainsi dit de Franconie Province d'Alemayne) apres avoir Conqueste les Gaules, sur les Romains á limitation d'iceux Distribuerunt les Domaines de leur Conquests aux Soldats qui avoient este avec eux victorieux & iceux retinderent à eux seuls la Dignitie d'Estrè Gentils hommes. Pour avoir droit de manier les armes, & aux Gaulois vassicus qui Essoient les anciens habitans du pays appellez Roturiers ils oserent l'usage des armes leur Reservant le Menage Rustique & la Marchandise. De ce tems la est venue *Chap. des Fiefs & Droit: Feodaux, Fol. 113.* *Soccagers.*

nue la Diſtinction des **Nobles** *&* *des* **Roturiers**, *& la loy par laquelle les* **Roturiers** *ne peuuent tenir* **Fiefs** *nobles.* *Car il eſt certain que tous perſonnes n'eſtoient pas anciennement capables de tenir* **Fiefs nobles**, *il n'y avoit que les hommes nobles* **francs** *&* **exempts** *de payer* **Tailles** *&* **Subſides**, *c'eſt pourquoy tels* **Fiefs** *eſtoient appellez* **Francs**. But in *France*, as well as here, in proceſs of time, the Law became more eaſie, by the *Relaxation* of the *Feudal Law*, and daily uſe, almoſt all Men became capable of purchaſing, holding, or receiving *Ex Dono* theſe *Fees*, however thoſe that held them were moſt properly accounted **Free Men**, and *Free* **Tenents**.

Malmsbur. *fol.* 93. *a. n.* 30.

Willielmo Filio Hen. primi omnes **Liberi homines** *Angliæ & Normanniæ cujuſcunque ordinis & Dignitatis, cujuſcunque Domini* **Fideles** *manibus & Sacramento ſe dedere coacti ſunt.* Theſe were all Tenents in *Military Service*, and all *Feudataries*, or *Vaſſals*, of what *Lord* ſoever.

Fol. 657.

Florence of *Worceſter* relates, how the Nobility performed this. *Conventio Optimatum &* **Baronum** *totius Anglia*

glie apud Seresberiam 14 Calendarum Aprilis facta est. Qui præsentia Regis Hen. homagium filio suo Gulielmo fecerunt, & fidelitatem ei juraverunt.

Eadmer sayes, 13 Calend. Aprilis factus est Conventus Episcoporum, Abbatum, & Principum totius Regni apud Serberiam cogente eos illuc Sanctione Regis. Igitur agnita Regis voluntate mox ad nutum ejus omnes Principes facti sunt homines ipsius Willielmi, Fide & Sacramento confirmati. Radulphus autem Archi-Episcopus Cantuariensis & alii Episcopi atque Abbates Regni Anglorum Fide & Sacramento professi sunt, se Regnum & Regni Coronam si defuncto patre suo superviverent in eum, omissa omni Calumnia & occasione Transtaturos, eique cum Rex foret Hominia fideli mente facturos. Fol. 117. n. 30, 40.

In a War, 14 Johan. To all the Sherifs in England, the noted and usual Free Men are discovered, Summone per bonos summonitores, Comites, Barones, Milites, & omnes liberos homines & servientes, vel Quicunque sint, vel de Quocunque teneant, Qui arma habere debent, vel armi habere Mat. Paris, Fol. 233. n. 50, 8 c.

possunt & Qui **Homagium** *nobis & ligantiam fecerunt*, &c.

48 *Hen.* 3. *m.* 18. *Dors.* *Rex dilectis & Fidelibus suis* **Militibus & Liberis hominibus** *de Com. Southampton*, &c. *vobis Rogamus mandantes*, &c. *ad nos sitis cum* **Equis & armis** *& toto posse vestro apud Oxon.* &c. These **Liberi homines** were *Tenents* in **Military** *Service. Hæc est conventio inter Dominum* **Johannem Regem** *Angliæ ex una parte & Robertum* **Filium Walteri Mareſcallum Exercitus Dei & Sanctæ Eccleſiæ** *in Anglia & Comitem* **Ricardum** *de* **Clare**, and Five Earls more, and Six Barons there named, *& alios* **Comites & Barones & liberos homines** *totius Regni ex alterâ parte*; These **liberi homines** were the other *Tenants* in *Capite*, or at leaſt their *Retinue*, and *Tenents* in **Military** *Service*, which were with them at **Runnemede**, where this *Agreement* was made.

Cl. 17 Johan. *m.* 21 *Dorſ.*

Pat. 42 Hen. 2. *m* 3. Dorſetſhire. *Pat.* 42 H. 3. *m.* 3. Hertf. *and ſo to other Sherifs through* England.

These **Liberi homines**, or *Freemen*, were the only Men of *Honor*, *Faith*, *Truſt*, and *Reputation* in the Kingdom; and from amongſt ſuch as theſe, which were not *Barons*, the *Knights* did chooſe *Jury-men*, *ſerved* on *Jury's* themſelves, Bare *Offices*, and *Diſpatcht* all *Country* Buſineſs.

Theſe

Theſe were the **Freemen** which made ſuch a **Trie** for their *Liberties* (as appears by *Magna Charta*; moſt of which is only an *abatement* of the *Rigor*, and a *Relaxation* of the *Feudal Tenures*) the reſt were but only *followers*, and helped to *augment* the *Noiſe*, they were no *Law Makers*, as this Gentleman Fondly imagines; for 'tis not probable, that thoſe Men that had the Force of the Nation, would permit Men of *ſmall Reputation* to ſhare with them in *Law-Making*. Thoſe that had the power of this, and other Nations *de facto*, alwayes did give Laws, and Taxe the People.

Theſe were the **Liberi & Legales homines**, the **Freemen** which *Glanvile* ſo often mentions; *Ut per Quatuor Milites Legales de Comitatu & viceneto, Eligantur* 12 **Milites** *Legales de eodem viceneto qui ſuper eodem Die coram me vel* **Juſticiis** *meis ad locum illum parati recogneſcere utrum* R. *vel* N. **Dajus** *jus habet in unâ hidâ terræ*, &c. And the finding out of Truth, and the *Tryal* ſo much depended upon theſe **Milites**, *Tenents* in *Military Service*, as it was a **Quere** in *Glanvils* time, That if there

Glanv. *lib.* 2. *cap.* 10, 11, *lib.* 9. *c.* 7. *The liberi homines which ſerved on Furies, were* Milites, *and* Tenents *in* Military-Service.

Ibidem, lib. 2. *c.* 21.

there were no Milites, or not Twelve to *be found* in the *Vicenage*, or the *County*, whether or how the *Demandant*, or *Tenent*, could have *right* done them.

Cap. 12. *Magna Charta* tells us, That *Assizes* of *Novel Disseisin*, and *Mort Dancestor*, shall be taken in the *County's* by the **Justices** and **Knights** of the *Shire*, which afterwards dwindled into *Freeholders* of 40 *s. per annum*: of these *Men* it is, and their *Services*, that **Bracton** says, They were so *notoriously free*, that in *Writs* of Right it was never mentioned, because so well known, *Notandum in Servitio* **Militari**, *non dicitur per* **Liberum Servitium**, *& idem, quod Constat, Quia* **tale Servitium Liberum** *est.*

Lib. 5. *cap.* 2. *fol.* 328. *a.*

Military Service *the most free Service.*

These were the Men that were *Jurors* and made *Presentments* in *Pleas* of the *Crown*, according to the Forms of proceeding in them.

Forma procedendi *in* placitis Coronæ Regis.

Hoveden, *fol.* 423. *a. n.* 40. *in the time of* Richard *the First.*

Imprimis Eligendi *sunt* 4 **Milites** *de Toto Comitatu qui per Sacramentum suum Eligant duos legales* **Milites** *de quilibet Hundredo vel Wapentachio, & illi duo*

duo *Eligant ſupra ſacrum ſuum* Decem Milites *de ſingulis Hundredis vel Wapentachiis, vel ſi* Milites *defuerint, Legales &* Liberos Homines, *Ita Quod illi* duodecim *in-ſimul Reſpondeant de omnibus* Capitulis (all the Articles) *de Toto* Hundredo *&* Wapentacco. *Bracton* ſayes, *Quatuor* Milites *Eligebant in quolibet Hundredo* 12 Milites *vel* 12 Liberos *&* Legales *homines ſi* Milites *non inveniantur*, to be *Jurors* in *Pleas* of the *Crown*, *Coram* Juſtitiariis *in Comitatibus*. *Fleta* hath it, that theſe four ſhall chooſe Twelve *de* Melioribus *de qualibet Ballivia*, that is, *Hundred*, or *Wapentake*.

The Jurors in Pleas of the Crown, were Milites, *and* Military Tenents, *the ſame with* Probi & Legales homines. *Fol. 116. n. 1.*

Others which held halfe Fees, third or fourth parts of Fees, &c. Lib. 1. c. 19. fol. 23.

Other Freemen there were in thoſe times, but what their *Quality* was, further then that their *Perſons* and *Blood* was *Free*; That is, that they were not *Nativi*, or Bond-men, it will give a *Knowing* Man Trouble to Diſcover it to us. We find in every *Leaf*, and almoſt every Entry upon that Leafe of *Domeſday*, Socmen, *& liberi homines*, *Poſſeſſors* of ſmall parcels of *Land*, but what their *Quality* was, and of what Intereſt in the *Nation*, *Dicat Apollo?* no Man yet hath made it out; nor can it be done by the account we have of ordinary

Socmen were Privileged Men, but what the privileges they injoyed at that time, or whether all had the ſame Privileges, no Man knows diſtinctly, there were many ſorts of Socmen. They were nothing alike.

ordinary *Freemen*, for a Century or two last past. The Freemen there, or Tains, Thegne, which are said to possess Manners, Towns, or *great parts* of *Towns*, very many whereof are found in the *Countys* Bordering upon *Wales*, with this addition, *Et liber homo fuit*, or *potuit ire quo voluit*, were the *same* with Milites, and liber homo *attributed* to such *possessors*, was the *same* with *Miles*.

There were besides these *Liberi homines*, *Free-Tenents* also (which perhaps might not always be *Freemen*) King *John*, *Anno Dom.* 1202. by *Galfrid Fitz-petre*, *Justitiary* of *England*, Wrote Letters to all his *Earls* and *Barons*, to perswade, and induce them to Collect the Fortieth part of their Rents towards the *Relief* of the *Holy Land*, of every of their *Towns*, as it might be let to Farm by the year, *Et si in eâdem villa fuerint per servitium* Militare *tenentes dent* Quadragesimam *portionem modo prædicto*, *si autem fuerint* Liberi Tenentes *similiter dent eandem portionem modo prædicto*, Computato Reditu, *quem* Dominis *suis solverint per annum*, The *Rent* the

Hoveden, *f.* 471. *a.* n. 30.

Free

Free Tenents paid to their *Lords* being *Discounted:* which then, if not the *full*, yet it was a considerable *part* of the *True value.*

Free Tenements, and *Free Tenents*, besides those in Military *service*, are mentioned in Magna Charta, *Nullus distringatur ad faciendum majus servitium de* Feodo Militis, *nec de alio libero Tenemento quam inde debetur.* See in the *Title Knights Fees*, &c. for *Fee Farms*, and *Frank Tenements*, &c. Cap. 10.

But these were not the *ordinary* Freemen, or the *Bulke* and *Multitude* of the *Freemen*, or *small* Freeholders, who in those times were of no great *esteem* or *value* in the *Eye* of the *Law*, for they, as well as the *ordinary Freemen* in the *Saxons* Times, were all *bound* with *Sureties* to their *good behaviors*; Every *Saxon Freeman* had his *undertakers*, that he should do every Man *right*, and make *satisfaction* for the *Crimes* he committed. The *Freemen*, *Masters* of *Families*, their Sons at Fourteen years of Age, and all other *Freemen*, were cast into Decuries, or Tithings; *Hors pris Clers & Chivalers & lour Enfaunts &* LL. Ethelred, c. 1. Britton, c. 29. p. 72. b. *These could not be* Probi & Legales homines.

& *Femmes*, except *Clercs*, **Villites**, their Children, and Women: That is, ten *Freemen*, or *Free Pledges*, were *bound* all for one another, and were to *bring* the offending Person amongst them to Justice, or to make *satisfaction* for the *Crime* he committed, if they could not do it; The chief of these was called the **Tithingman**, or **Capital** *Pledge*, who, if he had not his **Tithing** full, that is, *ten Free Pledges* so bound one for another, he was to be *Amercied*, and so were all such *Freemen* as ought to be in one *Tithing* or *another*, and were not to be Amercied, and also *such* as *received* any *Freemen*, that *ought* to be, and *were* not in any *Tithing*, or that *gave* them *Meat* and *Drink*, were to be Amercied.

Ibidem fol. 73. b.

The **Courts** in which the *Misdemeaners* of these Men were at first *punisht*, but at length *presented* only, were the **Sheriffs Turns**; which in process of time, for the ease of the People, were kept in every *Hundred*: The stile of the Court was the *View*, or **Court** of **Frank** *Pledges*, or *Freemen* cast into *Tithings*, which **View** of *Free pledges* was also for the ease of the Peo-

ple,

ple, *Granted* to *Lords* of *Manors* by the *King*, to have the View of *Tenants* and *Reſiants* within *their Manors*. All Freemen that liv'd within the Hundred, except *Earls*, *Prelates*, *Barons*, and *Religious* Men, ought *Service*, and were *bound* to *appear* at this *Court* held twice in the year. For though the **Military** *Fees* were ſufficient Pledges for *Military Tenents*, yet they were bound to ſerve upon the *Jury*, which was to give in the laſt *Preſentment* to the Sherif under their *Seales*, which were *Twelve Perſons* of the moſt *Sage*, *Loyal*, or *Legal* and *Sufficient* of the whole *Hundred*, choſen and Sworn by the Sherif, who were to take the *Preſentments* of the chief *Pledges*, and others upon Oath, and after they had *examined*, whether thoſe *Preſentments* were *true* or *falſe*, accordingly, upon certain *Articles*, they gave in **their** *Preſentment* to the *sheriff*. See more of this matter in **Magna Charta**, *c.* 35. *Cokes Second Inſtitut. fol.* 71. *Fourth Inſtit. fol.* 259, 261. **Fulton's** *Stat.* 17 *Edw.* 2. *fol.* 108. *Britton*, *c.* 29. I think no ſober Man will ſay, that theſe Freemen, or Freeholders of ſome ſmall parcels of Land,

Ibidem.

Ibidem, p. 72. *b.*

Ibidem, p. 71. *a.*

Ten Groats per annum then, was more then 40 s. per annum now.

Land, to the value perhaps, in those dayes, of some Ten Groats *per Annum*, were Members of our Common Councils, or Parliament.

Sapientes

Sapientes, Wites, or *Witen.*

WHich moſtly ſignifie *Noblemen*, or Great *Lawyers*. Wita in *Somners Saxon* Dictionary, is firſt turned Optimas, a Nobleman, and then Sapiens, a Wiſe Man. In the *Laws* of *King* Ina, it is ordained, that if any man fought, or ſtruck another, in the Houſe of an *Alderman*, or any other *Illuſtrious Noble Wite*, *Great Man*, or *Wiſe Man*, On other Gethungenes Witan, he was puniſhed *Sixty ſhillings*. In the *Laws* of *Edward* the *Confeſſor*, *Aldermen* were called *Seniores*, *non propter Senectutem cum quidam adoleſcentes eſſent*, *ſed propter* ſapientiam; Not for their *Age*, when as ſome of them were *young* men, but for their *Knowledge* and *Wiſdom*: hence from *Sapientia*, the *Aldermen* were called *Sapientes*, Knowing, or Wiſe men.

Cap. 6. de pugna.

Sapientes.

Cap. 35. De Gereve.

Aldermen, or Noble-Men.

Bede, in his *Eccleſiaſtical Hiſtory*, tells us, That *Paulinus* labouring with Edwin *King* of *Northumberland*, to receive the *Chriſtian Faith*, he reſolved

Lib. 2. c. 13. fol. 141.

first to Conſult *Cum Amicis, Principibus, & Conſiliariis ſuis*, with his *Friends, Princes*, and *Counſellors*, &c. which in the *Saxon* Verſion of *Bede*, done by *King* Alfred, are thus expreſſed; That he wolde mid his Freondum, Dnd mid his Ealdormonnum, ond mid his Witum Spꝛece on Getheaht habban. verbatim, That he would with his *Friends*, and with his *Aldermen*, or *Princes*, with his *Wites* or *Counſellors* ſpeak and adviſe have. Here we ſee *Principes* turned by *Aldermen*, and the Kings *Counſellors* by *Wites*.

Counſellors.

Aſſer, in the Life of *King Alfred*, reports, That he being accuſtomed to *Rehear* Cauſes, which in his abſence had been heard and adjudged in his Kingdom; admiring the *ignorance* of his *Earls*, *Prefects*, and *Miniſters* (Thegns) Commanded them, either forthwith to lay down their Places of *Judicature*, or to apply themſelves Sapientiæ *Studio*, to the *Study* of *Knowledge*, or of the *Law*. Here we ſee again, who had the *Title* of *Sapientes*, namely the *Judges*, that is the Comites, Præpoſiti, & Miniſtri, or *Thegns*, for theſe laſt were the Seminary of *Nobility*, of Great Offi-

Fo'. 21. n. 20, 30.

Sapientes were Judges, Earls, &c.

cers

cers, *Civil*, *Military*, and *Eccleſiaſtic* amongſt the *Saxons*. In a caſe ſo perſpicuous I ſhall produce but one or two Examples. *King Edgar* having rejected the *Clerc's*, and reſtored *Monks* to the *Monaſtery* of *Malmesbury*, and by Charter made *Alfric* Abbat thereof, reſtored alſo to that *Monaſtery* a Parcel of Land, with *Meadows* and *Wood* belonging to it, which one *Adelnoth*, a Contentious Perſon, had unjuſtly poſſeſſed himſelf of. But (*ſubtili diſceptatione à ſapientibus ſuis auditâ*) his ſubtile Pleading being heard by the *Kings Judges* (for ſo *Sapientes* muſt be rendred here) in the Preſence of the *King*, notwithſtanding his *Lying Evaſions*, he was convinced, and the Land returned to the *Monaſtery*. Ingulph. *Hiſt. Croyl. fol.* 503. *b.l.* 7. & 8. 10. They were Lawyers.

Laſtly, In the *Auctuary* to the Law of *Edward* the Confeſſor, 'tis ſaid, *Erant & aliæ poteſtates, & dignitates, per provincias & patrias univerſas & per ſingulos comitatus totius regni conſtitutæ, qui Heretoches apud Anglos vocabantur, ſcilicet Barones, Nobiles, & inſignes Sapientes*, &c. And there were other *Offices* and *Dignities* eſtabliſhed through all the *Provinces*, and every Lamb. *fol.* 147. *Tit. de Heretochijis.*

County of the whole Kingdom, which the Englisſh called *Heretoges* (in *King Ina's* Laws *Here-Thegns*) that is to ſay, *Noble Barons*, and *Illuſtrious* Wites, or Wiſemen, called in Latin *Ductores Exercitus*, *Generals* of, or Great *Officers* in the *Army*. Greg. of *Tours*, Radevicus, and many of the Forreign Antient *Hiſtorians*, mention Sapientes as *Lawyers*, *Counſellors*, *Judges*; and amongſt the Modern Forreign *Lawyers*, Pottoman, and Calvin, ſay expreſly, they were ſuch. But perhaps not of the inferior rank, no more than the *Saxon* Sapientes were, of which their Witenagemotes only conſiſted: And we have at this day, the *Judges*, and *Kings Counſell*, and other Great *Lawyers*, that ſit in the *Lords* Houſe, and are aſſiſtant to the *Parliament*, when there is occaſion.

In verbis.

Vaſallus

Vaſallus.

Vaſallus diminuto vocabulo, inferioris Ordinis **Clieng**, was a ſmall *Military Tenent*, or *Feudatarie*. **Clientes** *in his libris* (meaning the *Feudal Books*) *paſſim* **Milites & Feudatarii** *appellantur.* Hottom. *de verb. Feud. col. 962. D.* *Ibidem, col. 914. D.*

Vaſſallorum conditio tota non modo liberatis, atque ingenua, verum etiam plane **Militaris** *erat, á quo vitæ genere ſervos omnes ſub pœna capitis arceri nemo mediocriter quidem eruditus ignorat.* *Ibidem, de Feudor. Diſput. col. 810. F.*

Propria, perpetua, & ordinaria vaſallorum conditio hæc eſſet, ut ſimulatque Bellicum infonuiſſet cum **armis** *decoris & Equis militaribus præſto ſuis patronis eſſent.* *Ibidem, col. 811. B.*

Feudum non ipſo Jure ob **Vaſalli** *crimen* *Ibidem in Feudor. Commentar. col. 771. B.*

men patrono committitur, sed parium *sententia causâ cognitâ ei abjudicatur.*

VVhereſoever in this *Anſwer* I uſe the VVord *Vaſſall*, it is in the foregoing ſenſe, and as it ſignifies the ſame thing as *Feudatary* and *Military Tenent*.

Fani

Jani Anglorum facies Antiqua:

OR, SOME

Animadverſions

UPON A

BOOK,

CALLED,

Jani Anglorum facies Nova:

Animadversions upon a

BOOK

CALLED,

Jani Anglorum facies nova.

AS the Controversie between Mr. *Petyt* and my Self, is concerning matter of Fact only; whether the **Commons** were, or were not, constituent parts of the *Government* or *Common-Councils*, before 49 of *Hen.* 3. So it is here, whether the **Common-Council** of the Kingdom mentioned in *King Johns Charter*, was a *general Council*, as to all *publique Matters* and *Businesse* of the *Kingdom*; and whether he hath *revived* and *cleared* the *Monuments* of *Antiquity*, touching the *Great Councils* of the *Kingdom*, *&c.* from the First of *William* the *First*, to the 49 of *Hen.* 3. But this *new Face-maker*, *new Government-maker*, and *new Parliament-maker*, hath observed no Order or Method, and his *Work* being as *wild*, *extravagant*, and *confused* as his *Notion*; I can only pitch upon *some parts* of his *Treatise*, and those the most material, which are intelligible, and pass by his impertinent and unintelligible vagaries, until such time as (if he can) he makes them to be better understood, by explaining his meaning,

That

Jan. Angl p. 1. *That King* Johns **Charter** *exhibits the full Form of our English Great and General Councils in those days; if I may so say, is the vulgar Error of our Learned Men, and 'tis that which hath given the only prejudice to the pains of the judicious Mr.* Petyt, *who, I must say, hath laid the Foundation and sure Rule of Understanding the antient Records and Histories which mention the Great and General Councils in his distinctions between the* Curia Regis & Commune *or* Generale Concilium Regni, Barones Regni, & Barones Regni, *&c.*

vid. Answ. p. 169. Whether *Judicious* Mr. *Petyt* doth at all understand our antient *Records* and *Histories*, or whether the better for his *ungrounded* distinction of *Barones Regis*, and *Regni*, I leave the impartial Reader to judge, when he hath perused this *Answer*, to his antient *Right* of the *Commons Asserted.*

P. 2. *The* Author calls for the words of King *Johns* Charter to observe *whether they are meant of all General or Common-Councils, for making Laws or voluntary Gifts to the Crown, or only such as concerned the Kings immediate Tenents.*

P. 2. 3. *Nullum scutagium vel auxilium ponam in Regno nostro nisi per Commune consilium Regni nostri nisi ad Corpus nostrum redimendum, & ad primogenitum filium nostrum Militem faciendum, & ad primogenitam filiam nostram semel maritandam & ad hoc non fiet nisi rationabile auxilium; simili modo fiat de Civitate Londinensi & Civitas Londinensis habeat omnes antiquas Libertates, & liberas*

Consuetudines suas tam per terras quam per a-
Præterea volumus & concedimus quod omnes
Civitates & Burgi & Villæ & Barones de
que Portubus & omnes Portus habeant omnes
tates & liberas Consuetudines suas & ad
dum Commune Consilium Regni aliter quam
ibus Casibus prædictis.

From hence the *New Face-maker* inferrs,
the *City* of *London*, *all Cities*, *Burghs*,
ies, or *Townships*, That is, the *Villani*,
Inhabitants, the *Barons* or *Freemen* of
five *Ports*, and all *Ports* should, amongst
Free Customs, enjoy their Right of be-
of, or constituting the Common-Council
the Kingdom.

Whereas the words of the *Charter* signifie
more than that, as in other parts of the
gdom he would not exact *Ayd*, without
Common-Council of the Kingdom, unless
three Cases, to **Redeem his Body, make**
eldest Son a *Knight*, and **Marry his**
est Daughter; So it should be in the Ci-
of *London*, there should be no Ayd taken
such as held their *Houses* in *Capite* of the
g; but in the three Cases aforesaid, or
cerning the * City it self, which held in
ie, and should pay no other Ayd. *And*
it should have all antient Liberties and free
toms, as well by Land as by Water; That is,
local customs of Buying, Selling, Trading,
ing of Toll, regulating several Matters
the City, punishing Offenders, making By-
ws, &c. And further, that all *Cities*, *Burghs*,
Towns,

* Pat. 15 Joh. p. 2. m. 2.

Towns, *Barons*, or *Freemen* of the five P
and all other *Ports*, should have all their
berties and *free Customs*; That is, their
Usages, which were then, and yet are
and *different* in some things, in all the
Cities, and *Towns* of *England*.

But for the Right of the Inhabitan
these places, of being of, or constituting
Common-Council of the Kingdom. This
tleman should not only have said, and
sed such a Right, but ought to have
that *amongst* their *other Customs*, this

P. 3. *He proceeds and saies, But so much*
P. 4. *that if these (Inhabitants he means) or*
sides the Tenents in Capite, came before
Charter, and were at the making of it,
Right is preserved to them by it, and is
ed by the Charter of Hen. 3. c. 9. *which*
most the same words before recited, concer
the antient Rights of *London* and other
and *Burghs*.

If he means by those that came before
were at the *making* of the *Charter*, such
were Members of the *Great Councils*, and
Suffrages or *Voices* in them, and not the
bers or *rabble* that then attended such
tions, he must first prove that the *Inhabi*
of *Cities*, and *Burghs* were such, before he
say they had their *Rights* of being Mem
&c. preserved to them, as was above
mated.

Immediately after, as an evidence of what the *Cuſtom* and *Right* of theſe *Inhabitants*, and as to the *Great Council* of the *Kingdom*, he ſays, the *Charters* were made to, and the preſence of all the *Clergy*, *Counts*, *Barons*, and *Freemen* of the *Kingdom*, which proves not they had any *Vote*, or *Suffrage* in the making of them; nor indeed had they, for the *Great Charters* were only in the Petitions of the People, drawn into the Form of a *Charter*, and paſſed under the *Kings Seal*, as his *meer voluntary free Grants* and *Conceſſions*, without any *Votes*, *Suffrages*, or *Authority* of the *People*; and that they were taken as ſuch, and ſo received by them. The *Preambles* and *Charters* themſelves are a ſufficient teſtimony. *Ibid.*

Magna Charta on Petitions of the People Granted by the King.

First, *King Johns Charter*, when he ſaw the *Barons* too powerful for him then *gratanter ut concederet leges & libertates quas petebant*, he willingly granted the *Laws* and *Liberties* which they *asked* or *petitioned* for. *Mat. Paris, fol.* 255. n. 30. 50.

The Preamble of the Charter runs thus, *Johannes Dei Gratia Rex Angliæ*, &c *Sciatis nos Intuitu Dei & pro ſalute animæ noſtræ, &c. per Conſilium venerabilium Patrum, &c. Et nobilium virorum, &c. inprimis conceſſiſſe Deo, & hac præſenti Charta confirmaſſe pro nobis & hæredibus noſtris in perpetuum, quod Eccleſia Anglicana libera ſit, & habeat jura ſua integra, &c.* And in the *Charter* it ſelf, *Conceſſimus etiam & omnibus liberis hominibus noſtri Regni Angliæ, pro nobis & Hæredibus noſtris in perpetuum omnes libertates Subſcriptas* habendas & tenendas *Ibid. fol.* 256. Lin. 18.

Das *eis & hæredibus suis de nobis, & hæredi*[illegible] *nostris*; (that is) and we have also Gra[illegible] to all our *Freemen* of the Kingdom of E[illegible] *land*, for us and our Heirs for ever, all [illegible] underwritten Liberties, To *have* and to [illegible] to them and their Heirs, of us and our He[illegible] *&c.*

Pulteus Stat. *fol.* 1.

The *Preamble* of the *Charter* vulgarly at[illegible] buted to *Hen.* 3 is clear in this Case. He[illegible] by the Grace of God, *&c.* Know ye, that [illegible] to the Honor of Almighty God, and for [illegible] Salvation of the Souls of our Progenitors a[illegible] Successors, *Kings* of *England*, to the advanc[illegible] ment of Holy Church, and amendment of o[illegible] Realm, of our *meer* and *free will*, have Giv[illegible] and Granted to all *Arch-Bishops*, *Bishops*, *A*[illegible] *bats*, *Priors*, *Earls*, *Barons*, and to all *Fr*[illegible] *men* of this our *Realm*, these *Liberties* follo[illegible] ing.

And then as it is in the Charter it self.

Ibid. c. 1.

First, We have Granted to God, and [illegible] this present *Charter*, have confirmed for [illegible] and Our Heirs for ever, That the *Church* [illegible] *England* shall be free, and shall have all he[illegible] *whole Rights* inviolable.

We have Granted also, and given to [illegible] the *Freemen* of our *Realm*, for Us and O[illegible] Heirs for ever, these *Liberties* underwritte[illegible] to have and to hold to them and their He[illegible]

P. 3.

of us, and our Heirs for ever, All *Cit*[illegible] *Burghs*, *Parishes*, or *Townships*; So he Tra[illegible] slates Ville, as it follows *Civitates & Bu*[illegible] here in the *Charter*, but besides all reason [illegible]

World; For in this place *Ville & Burgi* be all one, or at leaſt *Ville* muſt be of the *ſmall Towns* incorporated; and *Burgi* of the *Great ones*, or the *Burgi Dominici*, the *Kings Burghs*, or ſuch as held of him *in Capite*: *Littleton* ſays, *Chescun Bourgh eſt* Ville, *mes nemy è Converſo*. Every *Burgh* is a *Town*, but every *Town* is not a *Borough*. And we have at this day many *Towns* in *England* which are Incorporated, and enjoy ſpecial Priviledges, though they are no *Parliamentary Burghs*, nor do ſend *Burgeſſes* to *Parliament*.

The meaning of *Ville* in K. *Johns Mag. Chart.*

Tenures Sect. 171.

And in the Writs of Summons for Election of Parliament Burgeſſes.

The Writs are thus moſt frequently Dated, as appears by the *Bundles* of *Original Writs* themſelves. *Edwardus Dei Gratia Rex Angl.* &c. *Ballivis Villæ de Sancto Botho ſalutem*, *Edward* by the Grace of God, King of *England*, &c. To the *Bayliffs* of the Town of *Botho*, Greeting. * *Conſ. Brevia Diriguntur ſubſcriptis.* (viz.) *Majori & Ballivis Villæ Briſtol, Ballivis Villæ magnæ Yernemouth, Majori & Ballivis Villæ de Kingſton ſuper Hull, Majori & Ballivis Villæ de Lænne, Majori & Ballivis Villæ Southampton*, &c. of ſome of theſe *Ville*, that word uſed in the place he cites, be underſtood, for they were to have and enjoy *easdem Libertates & Liberas conſuetudines ſuas*, their Liberties and *free Cuſtoms* which they had and enjoyed before the making of the *Charter*; What *Liberties*, what *free Cuſtoms* did

Bundel of Writs of Summons, 26 *Ed.* 3.

* *Ibid.*

Dus *eis & hæredibus suis de nobis, & hæredi*
nostris; (that is) and we have also Grant
to all our *Freemen* of the Kingdom of *E*
land, for us and our Heirs for ever, all t
underwritten Liberties, To *have* and to
to them and their Heirs, of us and our Hei
&c.

Pulton's Stat. fol. 1. The *Preamble* of the *Charter* vulgarly att
buted to *Hen.* 3 is clear in this Case, th
by the Grace of God, *&c.* Know ye, that
to the Honor of Almighty God, and for t
Salvation of the Souls of our Progenitors a
Successors, *Kings* of *England*, to the advanc
ment of Holy Church, and amendment of o
Realm, of our *meer* and *free will*, have Giv
and Granted to all *Arch-Bishops*, *Bishops*, *A*
bats, *Priors*, *Earls*, *Barons*, and to all *Fr*
men of this our *Realm*, these *Liberties* follo
ing.

And then as it is in the Charter it self

Ibid. c. 1. *First*, We have Granted to God, and b
this present *Charter*, have confirmed for u
and Our Heirs for ever, That the *Church*
England shall be free, and shall have all h
whole Rights inviolable.

We have Granted also, and given to a
the *Freemen* of our *Realm*, for Us and O
Heirs for ever, these *Liberties* underwritte
to have and to hold to them and their Hei
P. 3. of us, and our Heirs for ever, All *Citi*
Burghs, *Parishes*, or *Townships*; So he Tra
slates *Ville*, as it follows *Civitates & Bu*
here in the *Charter*, but besides all reason t
the

World; For in this place Ville & *Burgi* be all one, or at least Ville must be of the *small Towns* incorporated; and of the *Great ones*, or the *Burgi Do-*, the *Kings Burghs*, or such as held of in *Capite*: *Littleton* says, *Chescun Bourgh est* Ville, *mes nemy è Converso*. Every *Burgh* a *Town*, but every *Town* is not a *Borough*. we have at this day many *Towns* in *Eng-* which are Incorporated, and enjoy spe- Priviledges, though they are no *Parlia-* *Burghs*, nor do send *Burgesses* to *Par-*

The meaning of *Villæ* in K. *Johns Mag. Chart.*

Tenures Sect. 171.

And in the Writs of Summons for Election of Parliament Burgesses.

The Writs are thus most frequently Di-, as appears by the *Bundles* of *Original* themselves. *Edwardus Dei Gratia Rex* &c. *Ballivis Villæ de Sancto Botho salutem*, by the Grace of God, King of *Eng-*, &c. To the *Bayliffs* of the Town of Greeting. * *Cons. Brevia Diriguntur subscriptis.* (viz.) *Majori & Ballivis Vil-* *Bristol*, *Ballivis Villæ magnæ Jernemouth*, *Ma-* & *Ballivis Villæ de Kingston super Hull*, *Ma-* & *Ballivis Villæ de Lenne*, *Majori & Ballivis* *Southampton*, &c. of some of these Ville, that word used in the place he cites, be stood, for they were to have and enjoy *Libertates & Liberas consuetudines suas*, their Liberties and *free Customs* which they and enjoyed before the making of the *Charter*; What *Liberties*, what *free Customs* did

Bundel of Writs of Summons, 26 *Ed.* 3.

* *Ibid.*

did common, ordinary *Towns* and *Parishes* erect enjoy? What *Municipal Laws*, What *private Laws*, and *priviledges* had they? if they had none of these, they could not be the Cities here meant

P. 4. But the Record he saies, which Mr. *Selden* cites in his Titles of Honor, *fol.* 587. in the Margin, puts it out of all doubt, that the *Charter* was made by them all, (*viz.*) the *Clergy*, *Counts*, *Barons*, and *Freemen* of all the Kingdom; he gives us a *parcel* of it, as much as he thinks serves his turn * *Hæc est Conventio inter Dominum Johannem Regem Angliæ ex una parte, & Robertum filium Walteri Mareschallum Dei & Sanctæ Ecclesiæ, & Ric. Com. de Clare, &c. & alios Comites & Barones & Liberos homines totius Regni ex altera parte, &c.* This is the *Agreement* between *John*, King of England on the one part, and *Robert Fitz-Walter* Mareshal of the Army of *God* and Holy Church, *Richard*, *Earl* of *Clare*, and five *Earls*, and six *Barons* more there named, and othe *Earls*, *Barons*, and *Freemen* of the whole Kingdom. That is to say, that the *Earls*, *Barons* and others before-written, should hold the *City* of *London* of the *Livery* and *Grant* of the *King*; and the *Archbishop* of *Canterbury* should hold the *Tower* of *London* of the same *Livery* and *Grant*, until the Oaths that all concerned were to take through the whole Nation, had been taken to observe the Commands of the * 25 Barons, which were chosen to *compel* the King to keep the *Charter*, &c. and for performance of other things

* Cl. 17. Joh. M. 2. Dors.

* Paris fol. 261. 262.

lating thereto, the whole *Record* is publish'd at the end of these Animadversions.

But how by that he can make it out, that King *Johns Charter* was made by *all* the *Freemen* of *England*, there seems to me not the least appearance. If under the words **Liberi homines**, all the *Freemen*, or *Free Tenents* of what condition soever were comprehended; yet here is nothing in this Record, that any ways proves they made King *Johns Charter*; but the *Liberi homines* here, were the same which the King calls *Liberi homines nostri* in his *Charter*, and immediately Grants them several *Relaxations* of the *rigid feudal Tenure*, by which his apparent, these *Liberi homines* were Tenents *in Capite*, and yet neither was the *Charter* made by them, as is before intimated. See more of *Liberi homines* in the *Glossary* under that Title.

Parl. fol 158. n. 10. 20. &c.

Liberi homines in some places of K. *Johns* C. used for *Tenents in Capite.*

But I will take the words together, even as they who are fond of the Conjecture of the Tenents P. 6. in Capite, *being the full Representative Body of the Nation would have it.*

Et ad habendum Commune Consilium Regni de **auxiliis assidendis aliter quam in tribus Casibus**, & de **scutagiis** *assidendis submoneri facietis Archiep. Ep. Abb. & Majores Proceres Regni sigillatim per literas nostras & præterea submoneri in generali per Vice Comites, & Ballivos nostros omnes alios qui de nobis tenent in Capite ad certum Diem, scilicet ad terminum Quadraginta dierum ad minus, & ad certum locum,* **in omnibus literis submonitionis Causam submonitionis illius Exponemus**, *& sic facta submonitione negotium proce-*

dat ad diem assignatum, secundum consilium eorum, qui præsentes fuerint, quamvis non omnes submoniti venerint.

The Common-Council in K. *Johns* Charter, a General-Council of the Kingdom, &c.

It may very well be thought these words duely weighed and understood, were sufficient to satisfie any reasonable man, that the Tenents *in Capite* were a *General Council*, for the *dispatch* of all *publick Business*, and making *voluntary* **Gifts** to the *Crown*; for by them 'tis apparent they **Assessed Ayds**, which were *Publick Taxes* upon all Persons of the Kingdom, that were able to pay them: for so much **auxilium** doth in this, and many other *Records* import, as in *Pat.* 8 9. Johan. M. 3. Dors. *Rex omnibus*, &c. *Sciatis quod per communie consilium & assensum Concilii nostri apud Oxon. provisum est ad Defensionem Regni nostri & recuperationem Juris nostri concessum est, quod quilibet laicus homo totius Angliæ de cujuscunq; feodo sit, qui habet in Anglia redditus & catalla det nobis in auxilium de unaquaque mercata reditus sui annualis duodecim Denarios, & de unaquaque cujuslibet manerici catalli mobil. quam habuit in octabis purificationis beatæ Mariæ scilicet ad terminum Concilii* xii *Denar.* &c. T. *meipso apud Northampton* xvii die Febr. *& pat.* 8. 9. *Johannis numb.* 2. *Rex Archi. & officiali & toto Clero Archiepiscopatus Cantuar. salutem. Nostis satis quod Archiepiscopi Episcopi Abbates Priores & Magnates Regni nostri* **auxilium** *nobis fecerunt ad Defensionem Regni nostri & recuperationem terrarum nostrarum. Verum quia de vobis confidimus, quod nos & honorem nostrum diligitis, & Defensionem Regni nostri, & recuperationem*

This *Ayd*, *Paris* calls *Partem tertiam Decimam. fol.* 121 lin. 49. & he begins the year always at *Christmas.*

Note who were the *Commune Consilium* that gave the *Ayd* mentioned in the former Record.

rationem terrarum noſtrarum affectatis. Nos rogamus attentius quatenus tale auxilium *nobis ex parte veſtra faciatis, ut inde grates vobis facere debeamus, & quod alii Rectores Eccleſiarum vicini veſtri ad* auxilium *nobis faciendum exemplo veſtro facilius invitentur, &c. T. meipſo apud Ebor. 26 Die Maii.* An Ayd.

Rex vic. Kanc. ſalutem, Scias quod exigente neceſſitate terræ Sanctæ de novo proviſum eſt & conceſſum coram nobis & conſilio noſtro præſentibus Archi. Cantuar. Epiſcopis Comitibus & Magnatibus noſtris de communi omnium voluntate, quod quilibet Comes conferat Domino Regi Jeruſalem in auxilium *terræ prædictæ* iii *Marc. Baro* i *Marc. Miles* xii *Denar. Quilibet terram excoleus* i *Denar. & quilibet qui terram non habet, catalla habens ad valenc. dimid. Marc. tam infra Civitates & Burgos quam extra ſimiliter* i *Denar. &c.* Cl. 7. H. 3. M. 23. Dorſ. A Poll, or Head-Tax.

The xvth *part* of all the Moveables of *England*, as well of Eccleſiaſtics as Laics, which was given to *Hen.* 3. in the 9th of his Reign, by the *Archbiſhops*, *Biſhops*, *Earls*, *Barons*, *Abbats* and *Priors* only, for the confirming of King *Johns Charter*. *Mat. Paris* calls auxilium. See this Anſwer for the Hiſtory of Granting that *Charter*, p. 188. 189. 190. *Fol.* 222. n. 10. 20.

The 40th part of all Moveables of the Subjects in general, Granted to *Hen.* 3. 16th of his Reign, was called auxilium an Ayd. *Conceſſerunt nobis in* auxilium *Quadrageſimam partem omnium mobilium*, &c. Cl. 16. Hen. 3. M. 1. Dorſ.

Cl. 21. *Hen.* 3. m. 7. Doss.

The 30th part of all moveables, &c. Granted to the same King, in the 21 year of his Reign, was likewise called an Auxilium an Ayd. *Nobis concesserunt in auxilium tricesimam partem omnium mobilium*, &c.

Now if (as is here shewn) by Records, before, and near the time of the Granting of King *Johns* Charter, *Auxilia*, Ayds, were a 13th part of all moveables, a Poll or Head-Tax; a 15th, 40th, and 30th part of all moveables of all the Subjects, and these to be assessed by the *Tenents in Capite*; no doubt but the *Tenents in Capite* were the *General Council* of the Nation, seeing they might *Tax* others besides themselves, that is, all the *Subjects* in the Nation.

Further, If they were a great Council of the Kingdom for *Ayds* and *Escuage* only (which is hardly reconcileable to Sense) why was the Cause of Summons to be Declared in every Writ of *Summons* to the great *Barons* and *Tenents in Capite*; if they were only summoned about Ayds and Escuage, or other ordinary Business of course, the Cause of Summons needed not to have been *Declared*, *in omnibus Literis submonitionis causam submonitionis illius exponemus*.

Lastly, If all *Freemen*, or as our Author says in other places, all *Proprietors* were Members of the *Great* and *General Council* of the Nation; 'tis strange, there should not have been

been the ſame care taken that they might be Summoned, as well as the *Tenents in Capite*; certainly they came not to them by *Inſtinct*, nor is it ſcarce probable that they would leave their Ploughs and Countrey Buſineſs, to travel from one remote part of *England* to another to theſe Great Councils, which ſeldom continued above three or four days, if they had had right ſo to do.

The truth is, there were not in *William* the *Conquerors* Reign (as appears by an *Alphabetical Catalogue* made out of *Domes-day Book*) 700 *Tenents in Capite*, beſides *Biſhops*, *Abbots*, *Priors*, and *Great Churchmen*, that held all the Lands in *England* of him, and all others that had any Eſtates, held of them by mean Tenure; and therefore it ſeems not unreaſonable to think, that they ſhould be bound by the *Acts* of thoſe of whom they held their Eſtates. And out of theſe *Tenents in Capite*, 'tis highly probable (if not without doubt) that the *two Knights* were at firſt choſen by the other *Tenents in Capite*, in every County to Repreſent them; and two *Citizens* and two *Burgeſſes*, out of ſuch *Cities* and *Boroughs* as held *in Capite* of the *King*, which were many, and were called *Civitates & Burgi Dominici*.

And though in proceſs of time, many of theſe *Eſtates* and *Lands* became *Free Tenements*, or were holden in *Soccage*, that is, were Freeholds, yet the Lords reteined **Homage** (which in the times we write of, was no

Glanv. lib. 9. c. 1, 2, 5.

idle insignificant word) and by that, a Dominion over the Estate, whereby upon *Disobedience, Treachery, Injury* done to the Lord, *&c.* the Lands were forfeited to them: and although the Lands nor the Tenents of them which were termed Freeholders, were not subject to any *base Services*, or *Servile works*, yet the Lords had a great power over these Tenents, by reason of their doing Homage to them (which is now Antiquated) for *Eo nomine*, their Lands were many ways liable to forfeiture.

Homage, what advantage to the Lord.

See more of several Great Councils in King *Johns*, and *Hen.* 3. time in this Answer, p. 139, 140, 141. wherein the *Bishops, Earls, Barons*, the *Nobiles, Magnates & Proceres* only, which very probably were the *Tenents in Capite*, that Treated with the King *de negotiis Regni, de arduis negotiis Regni, de statu Regni, &c.* and therefore were General Councils for all publick Business of the Kingdom.

Ibid.

There were Barones Majores, *that held not by any Feudal Tenure*, &c. *And particularly instanceth in the Earldom of* Chester, *that the County was given to* Hugh Lupus, *Tenendum sibi & haeredibus ita vere Liberè* (as *Camden* hath it) *ad Gladium, sicut ipse Rex tenebat Angliam ad Coronam.* To hold as freely by the Sword, as the King himself held *England* by the Crown. By these words here is a *Tenure* Created, and that *ad Gladium*, which could be no other than a *Military Tenure*, which was always *Feudal*; and this *Tenure* could be

Britan. fol. 464.

The Earl of *Chester* was a Feudal Tenent, and held *in capite.*

of

of no other, than either of the *Conquerors Person*, or of his *Crown*, for he gave the County to *Hugh Lupus*, and either way it was a *Tenure in Capite*, he was Sisters Son to the Conqueror, a Person of great Note amongst the *Normans*, and an expert Soldier, and had this County given him to restrain the incursions of the *Welsh*, and inlarge his, and the *Conquerors* Dominions, which was his *Military-Service*. In *Domesday-Book* 'tis said, *In Cestre-scire tenet Episcopus ejusdem Civitatis de Rege quod ad suum pertinet Episcopatum. Totam Reliquam terram Comitatus tenet Hugo Comes de Rege cum suis hominibus.* In *Cheshire*, the *Bishop* of that *City* holds what belongs to his *Bishoprick* of the *King*; The whole residue of the Land of the County, Earl *Hugh* holds of the King, with his Men, who were his *Military Tenents*, which with his Land he held of the King.

Order. vital. *fol.* 522. A.

Tit. *Cestre-scire.*

He was Founder of the *Monastery* of *St. Werburgh* in *Chester*, and both Founded and Endowed it *Anno Dom.* 1093. *Concedente Rege Willielmo*, by the Grant and Licence of *King William*, which was *Rufus*, a manifest Token he was under his *Dominion*.

See the Chart. in *Leicesters* Remar. on *Cestr. fol.* 109.

And that the *County* or *Earldom* of *Chester* had always a *Dependence* upon, and did always belong to the *Crown*, we have sufficient testimony from Record, when it was annexed to the *Crown*, upon the death of *John Scot*, Earl of *Chester*, without Issue, or Heirs-Male. *Rex Baronibus, Militibus, liberis hominibus*, &c

Pat. 31 Hen. 3. m. 5.

The Earldom of *Chester* always belonged to the Crown. Ord. vit. *fol.* 521. D. & 522. B.

de Com. Cestr. salutem, sciatis quod praedictum Comitat. Cestr. una cum Castris de Gamok & Dissard & omnibus ad ea pertinentibus retinenda duximus in manu nostra, ut semper spectantia *ad Coronam nostram*, &c.

Roger de Montgomery was made *Earl* of *Shrewsbury*, and *William Fitz-Osborn*, *Earl* of *Hereford*, by the *Conqueror*; upon the same terms that they should *repell* the *Welsh*, and defend the Borders against them, and being of the greatest amongst the *Normans*, and *Williams* chief Counsellors, had *great Privileges* granted them in their *Earldoms*.

P. 8.

I do admit, what our Author cites from *Selden*, and he from *Malmsbury*, *That William Fitz-Osborn did make a Law, that Nullus Miles pro quolicunque commisso plus septem solidis, sed in aliis Provinciis ob parvam occasiunculam in Transgressionem praecepti herilis viginti, vel viginti quinque pendantur.* No *Knight*, or rather *Military Tenant*, for any fault, should pay more than Seven shillings; whereas in other Counties, upon a small occasion, for the transgression of their *Lords* or *Patrons* Command, they paid 20 or 25 s.

This was a *Private Law* to Military Men, and he that gave them *Fees*, might give them what *private Laws* he would, relating to them. 'Tis further probable, he brought this Law out of *Normandy* with him, and that it had been used in the *Seigneurie* of *Bonet* whereof he was *Lord*; for he established the

Domesd. Cestreshire in Altiscros Hund.

same

sam Laws and *Customs* in *Hereford*, that were used there.

King Henry *summons all the* Magnates of *England, ad Colloquium, because he was greatly in debt, by reason of his Wars, he demands* Auxilium *ab omnibus generaliter*; The Story he hath out of *Mat. Paris*, who hath it thus. *Convenerant eo tempore, Nonas Martii ad* Colloquium *apud Westmonasterium ad vocationem Regis* Magnates *Angliæ, tam Laici, quam* Prelati, *quibus Rex proposuit, quod magnis esset debitis implicatus, causa bellicæ expeditionis, quam nuper egerit in partibus Trasmarinis, unde necessitate compulsus, ab omnibus generaliter* Auxilium *postulavit.* There met at that time on the *Nones*, or *7th* of *March*, at a *Colloquium Conference* or *Parliament* at *Westminster*, according to the Kings Summons; the *Great Men of England*, as well *Laymen* as *Prelates*, to whom the King propounded, that being involved in great Debts, by reason of his late Trasmarine Expedition, he was necessitated to require generally of them all an *Ayd*.

P. 9.

Fol. 372. n. 40. *Ann. Dom.* 1232. 16 *Hen.* 3.

The King demands Ayd to pay his Debts.

And then follows, as 'tis in this Author, *Qui audito Comes Cestriæ Ranulphus pro* Magnatibus *Regni loquens, respondet, quod* Comites, Barones, *ac* Milites *qui de eo tenebant in Capite, cum ipso erant ibi corporaliter præsentes; Et Pecuniam suam ita inaniter Effuderunt, quod inde* Pauperes *omnes recesserunt, unde Regi de Jure* Auxilium *non debebant, ac se petita Licentia* Laici *omnes recesserunt.* (Our Author hath left out the word Laici, in his Book, because it manifestly destroys his whimsey.)

P. 9, 10.

The Barons deny it.

Paris *ibid.* lin. 50.

The

The words are thus to be Engliſhed, which being heard (*viz.* The Kings demanding *Ayd*) *Ranulph Earl* of *Cheſter*, ſpeaking to the Great men of the Kingdom, anſwered That the *Earls*, *Barons*, *Knights*, or *Military Men* that held of him *in Capite*, were with him corporally preſent in that Expedition, and had ſpent ſo much Money to no purpoſe, that they returned poor, and therefore of right they ought no Ayd to the King: and ſo having asked leave, all the *Lay-men* departed. *Prælati verò Regi Reſpondentes, dixerunt*, as *Paris* goes on, *&c.*

* *Conceſſa fuit Regi Auxilia Militaria de qualibet Scuto 2 Marcæ & Dimid. 5 Johannis. 1204. Par. fol. 209. n. 30.*

This was a * *Military* Ayd, that is Scutage, which was here demanded, as appears by the Earl of *Cheſters* Anſwer, for there is nothing more notorious than that, when ever the *Military Tenents* of the *King*, or any other *Lord*, were *perſonally preſent* in any Expedition, the Law was, and the uſage accordingly, that Scutage Service was neither of right due from them, nor paid by them, but it was always levyed of ſuch as were abſent, or performed not their full Service; But *Scutage*, was after granted as a *Taxe* by common conſent.

After this *denial* of *Scutage*, asking leave, *Laici omnes receſſerunt*, all the *Lay-men* departed. All the *Lay-men* certainly were *Tenents in Capite*; elſe, why did they depart upon affirming there was no *Ayd* due to the *King*, becauſe they had been all perſonally preſent with him in that Expedition, for which he demanded *Ayd*.

Here was the Earl of Chester *(meaning at* Cologne*) this being a Summons to a general Assembly; but when the King asked Money for the Expences in the Wars, he tells him, in the name of all the* Laity, *that those which held of him* in Capite *(which is as much as to say, he was none of them) served them in their own Persons, and at their own Charge, therefore he begged leave to be gone, if the King had no other business with them.* P. 10.

This he confesseth was a General Council, and all the *Lay-men* were only *Tenents in Capite*, as appears above; and he here confesseth likewise, that they served in their own Persons, and at their own Charges: Let the Reader therefore judge, whither *Tenents in Capite*, were not the only constituent Members of Great Councils in these times.

It may be noted once for all, That if our Author finds any thing done in any Council, which he conceives doth favour his Fancy, That to be sure is a General Council, but if it be against him, then 'tis but *Curia Ordinaria*, or *de More*, and this he frequently avers; without sound Reason or Authority. P. 10.

The Earl of Chester *tells the King, in the name of all the Laity, that those which held of him* in Capite *(which is as much as to say, he was none of them) as is above recited; a very ridiculous inference*, and his Note on the Margin of this Page is as idle, where he says, Without Authority the *Earl* of *Chester* was not to attend the *King* in his Wars, nor to pay *Escuage*, in *lieu* of *Military Service*, because all his *Tenure* was to *Keep* to the *Defence* of the *Marches* (of *Wales* he means.) For ought our Author knows, what he says of the *Earl* of *Chester* might be true, But this same very *Ranulph*

This *Ranulph* was Earl of *Chester* above 50 years, from 27 *Hen.* 2. 1181 to the latter end of the 16. *Hen.* 3. 1232. *Dugd.* Bar. Tom. 1. *fol.* 41. Col. 2. *fol.* 45. Col 2.

nulph was with *King John* in an Expedition into *Poictou*, in the 15th of his Reign. *Claus.* 15 *Johannis* m. 1. *Dorf.* And in the 16th of the same King he paid *Scutage* for not being with him in an Expedition thither. *Cl.* 16 *Johannis* m. 15. *Dorf.* In the 6th of *Rich.* 1. he was in *Normandy with King* Richards *Army*. *Rot. Pip.* 6. R. 1. *Buck. & Bedf.* upon these *Pipe Rolls*, all the *Tenents in Capite* are entred who performed their Service, who not, with their *Scutages*; nay more than all this, he was with the *King* in the Expedition we are writing of into *Gascoign*, *Poictou*, and *Britan* in *France*; in which he told the King, the *Tenents in Capite* had consumed their Money, &c. and stayed in those Wars near a year after the *King* returned into *England*, when he and the *Earl* of *Britan* made *Truce* with the *King* of *France* for three years, on behalf of the King of *England*. These are certain marks the *Earls* of *Chester* were *Feudal Tenents*, and not *Sovereign* free *Princes*, as this Gentleman would have them to be; and if he will require more of me, I can let him have them.

Paris *fol.* 367. n. 30. & *fol.* 369. n. 30..

And he may further take notice, That though the Earl of *Chester*, and *Tenents in Capite* were averse at this time to Grant the *King Scutage*, to pay his Debt contracted in this Expedition; yet about six months afterward, upon the 14th of *September* following, they Granted him the 40th *Part* of all moveables for the payment of it.

Conveneruns

Conveneruntque tempestate eadem apud Lambeth, Epiloquium in exaltatione Sanctæ Crucis coram Rege Episcopi, *& alii Ecclesiarum Prelati cum* Proceribus *Regni, ubi concessa Regi pro debitis quibus Comiti Brittanniæ tenebatur astrictus, quadragessima pars rerum mobilium ab* Episcopis, Abbatibus, Prioribus, Clericis & Laicis.

Ibid. fol. 377. n. 50. A. D. 232. 16. Johannis.

A Grant of a 40th part of Moveables.

There can be no doubt, but Proceres [illegible] here, were the same that Magnates [illegible] were in the other *Colloquium*, on the [illegible] of *March* next preceeding this.

What he further urges for the *Earls* of [illegible] independencies of the Crown, they [illegible] *Privileges* which are to be found almost [illegible] *Royalty*, and *Liberty* in *England*, and [illegible] originally *Indulgences* and *Grants* from [illegible] *Kings* of *England*, by which (no man [illegible] hath any Sense) can believe they ever [illegible] to *Ruine* themselves, or the *Rights* [illegible] *Crown*; but rather supposed a *Return* [illegible] *Duty* and *Obedience*; those *Favours* being [illegible] upon a *Reciprocation* of *Gratitude*.

P. 15.

But there is a further irrefragable Argument [illegible] *Negative*, viz. *That this* Commune Con[illegible] (*meaning that constituted by King* Johns [illegible]) *was not the* Great Council *of the* [illegible]. *And that is the Judgment of a whole* [illegible] *in the* 40th *of* Edw. 3. *It appears by* [illegible] *History, That King* John *had resigned his* [illegible] *in such a Council in this here; it was* Communi Consilio Baronum nostrorum;

rum; *and yet the Prelats, Dukes, Counts, Barons and Commons, upon full deliberation in Parliament, Resolve, That the Resignation was void, being contrary to the Kings Oath, in that 'twas* Sans leur assent; *without their assent, and the King could not bring the Realm in Subjection.* Sans assent de eux.

No man I think will say, a whole *Parliament* is *infallible*, there have been many *Acts* and *Clauses* of *Acts* of *Parliament*, nay, the whole proceedings of some whole *Parliaments* revoked by other *whole Parliaments*, which ought not to have been done, if a whole Parliament had or could have been *infallible*; and in this very Case, the *whole Parliament* was doubtful of Matter of Fact, (so little knowing they were of what had been done before their time) For in this very *Roll* it is said, n. 8. *per Plusieurs Evidences apiert que si ce fust fait, ce fust fait sanns leur assent*, That is, by many Evidences it appears, That if it was done (That is, if King *John* had resigned the *Crown* to the *Pope*) it was done without their Assent, That is, without the Assent of a *General Council*, *Colloquium* or *Parliament* in those times when it was done; or which is all one, without the *consent* of the *Nation.*

See the Judgment of the Parliament in this Case, in this Answer, pa. 103, 104. and what it was.

P. 15. Our Author says, *It appears by the History that King* John *in such a Councel as was customary by his* Magna Charta, *Resigned* his Crown which cannot be true; for he *Resigned* his *Crown* the 15th of *May*, in the 14th of his *Reign*, and he *Granted* that *Great Charter of Liberties* three years after, on the 15th of

Paris, fol. 237. l. 10.

Ibid. fol. 262. l. 5.

Jun,

ſame, in the 17th of his *Reign*, and therefore he could not Reſign it in ſuch a *Council* as was *Conſtituted* three years after his *Reſignation*: and the *Hiſtory* it ſelf informs us otherwiſe.

For the *King* of *France* had raiſed the Force of his *Kingdom* to ſeize the *Kingdom* of *England*, it being given to him by the *Pope*, when he had Depoſed *King John*, who ſummons all the Force of his Kingdom to appear at *Dover*, in the *cloſe* of *Eaſter*, to *oppoſe* the *King of France*, and while with a vaſt Army he expected his Landing, *Pandulph*, the *Popes Legate* came over to *King John*, and recounting the numerous Army, Power, and Force of the *King* of *France*, and telling him that he boaſted he had *aſſurance* by the *Charters* of almoſt all the *Great Men* of *England*, of their *Fidelity* and *Subjection* to him; he ſo *affrighted* and *confounded King John*; that fearing when he came to Fight he ſhould be left alone, or delivered to his *Enemies* to be *deſtroyed* by them; he acquieſced in the *perſwaſions* of *Pandulph*, which was to *Gratifie* the preſcribed Bishops, *Canterbury*, *London*, *Ely*, *Hereford*, *Bath*, and *Lincoln*, the *Prior* and Monks of *Canterbury*, *Rob. Fitz Walter*, *Euſtace de Veſci*, and all the *Clergy* and *Laity* that were concerned in the Election of, and ſided with *Stephan Langton*, *Archbiſhop* of *Canterbury*, in all their Demands; and *Reſign* his *Crown* to the *Pope*. Indeed it is ſaid in the *Chart* of *Reſignation*, that it was done *Conſilio Baronum noſtrorum*, by the Counſel of his *Barons*. And it

Ibid. fol. 233. n. 20. 30. Why K. *John* Reſigned his Crown.

Ibid. & *fol.* 234. n. 10. 20.

Ibid. lin. 28.

Ibid. lin. 37.

Ibid. lin. 45.

Ibid. lin. 55.

Ibid. fol. 235. lin. 5.

Ibid. lin. 10.

Ibid. n. 20.

Ibid. fol. 236. n. 30. 40. *&c.*

Ibid. lin 52.

Ibid. fol. 237. l. 17. Where, and before whom K. *John* Resigned his Crown.

it was executed in the House of the Templars near *Dover*, *Coram H. Dublinensi Archiepiscopo, Johanne Norwicensi Episcopo, Galfrido Filio Petri, W. Comite Sarisberiæ, W. Comite Pembroc. R. Comite Bononiæ, W. Comite Warenn, S. Comite Winton, W. Comite Arundel, W. Comite de Ferrariis, W. Briwer, Petro Filio Herberti, Warnio Filio Geroldi, viz.* in the Presence of two Bishops, the Justitiarie, seven Earls, and three *Barons*, without subjoyning, *Et aliis Episcopis, Comitibus & Baronibus*; or, *Et Communitate*; or *Tota Communitate*; or any other Note that there were more present.

This being therefore a *Military Summons*, for the gathering together of an Army, and the appearance of all Men, with Horse and Arms, and other Foot-Arms, and Weapons at *Dover*, the place appointed for the Rendezvous; and the Assembly being an Army, and the five prescribed *Bishops* being in *France*, and the *Barons* that sided with them, fled beyond Sea, or not daring to appear. And further, the *Resignation* having been executed before so small a number of *Barons*, without probability of more being present; this could not be such a *Council* as was Constituted by *King Johns Charter*; that is, it was not a Parliamentary Council, or Colloquium, or General Representative of the Nation, and therefore the *Parliament* in the 40th of *Edw.* 3. might well say, The *Resignation* was made without their *Assent*: and thus falls his irrefragable Negative Argument, and comes to nothing.

Ibid. 234. lin. 1. 2.

If

If no Instance can be shewn from Record & History of Auxilia *or Ayds, raised by the Kings of* England, *without more general consent, except such as were raised of his immediate Tenents, &c.* P. 20.

There have been several *Instances* given already in these animadversions, That Auxilia *Ayds* have been given with no more general Consent, than that mentioned in *King Johns Charter*; as for example, a 13th, 15th, 30th, 40th. *part* of all *moveables*, and a *Poll* or *Head-Tax* imposed upon all *Subjects* in general that were able to pay; in which *Instances*, the *Difference* between *Scutage* or *Military Ayds* raised upon *Knights Fees* only, and other *Ayds*, *Taxes*, or *Tallages*, may easily be discerned. General Taxes or Ayds imposed upon the Tenents in capite.

It is agreed on all hands, That the ordinary Curia was *held thrice a year, at* Christmas, Easter, *and* Whitsontide, *and in the time of* Will. 1. *the Places were as certain on* Christmas *at* Gloucester, *on* Easter *at* Winchester, *on* Whitsunday *at* Westminster. *While they were held at the accustomed places, there was no need of Summons; they that were to come* ratione Tenuræ *might well come* de more; *afterward they removed from place to place, the King made the Court wherever he was pleased to hold it, and indeed when ever; but then it could not be that* Curia de more, *if it were at a different time & place, then there was no need of Summons, if there were summoned at any time more than the ordinary Members of the Curia. If this was on the day of the Curia, there was an union of* Page 39.

the Great Council and the Curia, if on a different day, there was a Great Council by it self, yet the Members of the Curia were a part thereof.

Notwithstanding, he says it is agreed on all hands, the *ordinary Curia* was held thrice a year, I never heard of any one of this opinion but himself; he would make the *Great Councils* held at these times he mentions, and the *Great Confluence* of *Nobility* then to the *Kings Court*, to be the *Kings ordinary Court*, for the dispatch of ordinary Business, and Controversies between the King and his Subjects, or between Man and Man.

I will not denie, but often Petitions might be put up, and Complaints made to them about private Matters, such as always have been to the *House* of *Lords*, and many more in antient times, than have been for a *Century* or two of years, and that they did *determine*, and pass *Judgment* in those Cases; but that they were therefore the *Kings ordinary Court*, I think no body will say, but such as never read *antient History* or *Lawyers*, or at least, never intended to understand them.

Lib. 1. c. 4. The *Kings ordinary Court*, what it was.

A very brief Description of the *Kings antient ordinary Court*, we have in the *Black Book* in the *Exchequer*, written in the time of *Hen. 2.* by an *Officer* of that *Court*, *Habet enim hoc commune*, (meaning the *Exchequer.*) *cum ipsa Domini Regis Curia, in qua ipse in propria persona sua, Jura decernit, quod nec Recordationi, nec sententiæ*

ſententia in eo latæ licet alicui contradicere. It hath this common (Writing of the *Exchequer*) with the Kings Court it ſelf, in which he in his own proper Perſon, Decrees Law; in that it is not lawful for any one to contradict what is Recorded there, or a Sentence paſſed in it.

Of this Court *Bracton* ſays, *Habet Rex unam propriam Curiam ſicut aulam Regiam & Juſticiarios capitales, qui proprias cauſas Regis terminant, & aliorum omnium per Querelam vel per Privilegium ſive Libertatem, ut ſi ſit aliquis, qui implacitari debeat niſi coram ipſo Domino Rege*; The King hath one proper Court, even as his *Royal Palace*, and Capital Juſtices, who determine his proper Cauſes, and the Cauſes of other by Plaint, Priviledge, or Liberty; as when a man ought not to be impleaded but before the King himſelf. And in another place, *Item Juſticiariorum quidam ſunt Capitales, Generales, perpetui & Majores, à latere Regis reſidentes, qui omnium aliorum Corrigere tenentur injurias & errores.* Alſo of Juſtices, there are ſome Capital, General, Perpetual, and of greater note, *always preſent* with the *King*, who are bound to correct the Errors and wrongs of others. *Fleta*, another antient Lawyer writes thus, *Habet etiam Rex Curiam ſuam, & Juſticiarios ſuos tam Milites quam Clericos locum ſuum tenentes in Anglia coram quibus & non alibi niſi coram ſemetipſo & Concilio ſuo, vel auditoribus ſpecialibus falſa judicia & errores Juſticiariorum evertuntur & corrigantur, ibidem etiam terminantur Brevia de Apellis & alia Brevia*

Lib. 3. c. 7. n. 2.

Ibid. c. 9. n. 2.

Lib. 2. c. 2. §. 5.

via super actionibus criminalibus, & injuriarum contra pacem Regis illatarum impetrata, & omnia in quibus continentur, ubicunque tunc fuerimus in Anglia. The King hath his Court and Justiciaries, as well *Military Men* as *Clercs* his Deputies in *England*, before whom, and not other where, *unless before himself and his Council*, or special Commissioners of *Oyer*, false Judgments, and Errors of Justices, are returned and corrected: and there also are determined Writs of Appeals, and others, upon criminal Actions, and Injuries against the Kings Peace, and all others, in which are contained these words, *ubicunque fuerimus in Anglia*, where ever we shall be in *England*. By *Bracton* this is called *Magna Curia*, because in a Writ of Right, if the Lords Court failed of doing Right, the Cause was transferred to the County, that the Sheriff might do Right, and so from the County to this Court, if the King would it should be there determined, upon certain proof of failer of Right in other Courts. From this Court all other great Courts in *Westminster*, but the *Exchequer*, were derived.

Lib. 1. c. 7. n. 7.

For concerning this Court, 'tis that (*a*) *Britton* in the Person of *King Edw*, 1 (by whose Order he wrote his Book) says, *En primes en droit nous Mesmes & de nostre Court avons issint ordyne, que pur ceo, que nous ne suffisons mye en* nostre proprie Persone, *á* Oyer & Terminer *toutes Quereles del people avant dit, avons party nostre charge ex pleusieurs parties sicome icy est ordine.* First of all, in right of

(*a*) P. 1.

of our ſelves and of our Court, we have ſo ordained. And for that we are not ſufficient in our own proper Perſon, to hear and determine in all Plaints of our People aforeſaid; we have divided our Charge into many parts, as is there ordained. And then proceeds, *nous voluns que noſtre Juriſdiction ſoit ſur Toutes juriſdictions en noſtre Royalme*, &c. We Will that our own Juriſdiction be Superior to all Juriſdictions of our Realm; ſo that in all *Felonies*, *Treſpaſſes*, *Contracts*, and in all other *Actions Perſonal* or *Real*; we have power to give, or cauſe to be given, ſuch *Judgments* as they will bear, or do appertain to them, (without other Proceſs) whereſoever we know the direct right, as Judge.

This was the Curia Regis ordinaria *ubi-cunque fuerit in Anglia*, but was no Magnum Commune, or Generale Concilium *Regni*; which nevertheleſs, without derogation to it, in reſpect of Time and Place; if without Summons, there was a great and full appearance of the Great *Barons* and *Tenants in Capite*, at the Kings Court at *Chriſtmaſs*, *Eaſter*, and *Whitſuntide*, might be called *Curia ordinaria*, or *Ex More*. But if it was held at any other time, or at thoſe times by Summons, it was not to be called an *ordinary Court* or *Colloquium* in reſpect of Time: And in Truth, the Kings ordinary ſetled and eſtabliſhed Court was a different thing from the Confluence of *Barons* and *Tenents in capite* at thoſe three great Feaſts, which were ſet and appointed times for Great and General Councils,

cils; if there were an appearance sufficient, and any publick Business to dispatch. But by this Charter it was provided, That there should always go forth Summons, and the cause of the Summons to be expressed in it, which needed not have been provided for, if there had been but one Cause, for which they were to be summoned, as our Author averrs.

To make good his Assertion, That the *Tenents in Capite*, only made a *Curia de More*, or the Kings ordinary Court; and that there were more than those in the Great Councils he produceth many Instances in several Kings Reigns.

P. 39. *About the First year of* William 1. *as Mr.* Selden *supposes, was held the Council at* Pinnenden Heath *in* Kent, *to determine the difference between* Odo, Bishop *of* Bayeux, *Earl of* Kent, *and Arch-Bishop* Lanfranc; *If this were a* Curia de More, *then 'tis evident, that more than Tenents in Chief, nay, all Proprietors Assembled then of course, even at the* Curia, *for the Probi Homines of several Counties were there; but it appears, it was upon the Kings Summons to all the Freeholders of* Kent, *and of some adjacent Counties.*

Eadmer. Histor. fol. 9. P. 40. *Præcepit Rex Quatinus aduntatis primoribus & probis viris non solum de Comitatu Cantiæ, sed & de aliis Comitatibus Angliæ querelæ Lanfranci in medium ducerentur, Examinarentur, Examinarentur.*

Ibid. *Dispositio itaque apud Pinenden principum Conventu Goffridus Episcopus Constantiensis,* viz.

Ea Tempestate prædives in Anglia vice Regis Lanfranco, Justitiam de suis Quærelis strenuissime jussus facere, fecit, Lanfrancus enim validâ ratione, subnixus, ex communi omnium astipulatione & judicio, ibi cuncta Recuperavit, quæ ostenso sunt antiquitus ad jura Ecclesiæ Christi Cantuariensis pertinuisse, tam in Terris quam in diversis Consuetudinibus.

Our Author Transcribes no further than *Fecit*, the whole as I have transcribed it, makes it clear he understood not *Eadmer*, as it will presently appear.

Here all the Proöi homines, *are by variation of the phrase, Conventus Principum; a Bishop was President, and pronounced the Judgment, but 'twas, as 'tis said afterwards,* Ex Communi omnium astipulatione. P. 40.

Here matter of ordinary Justice was determined before, more than the ordinary Curia. P. 41.

This looks very like a General Council of the whole Nation; to be sure, 'twas more than a Curia of the Kings Tenents and Officers, and more than a County Court.

Yet in the nature of a County Court, it being several Counties united, and so was adunatio Consiliorum, *though not of the Council of the whole Nation. An antient* Ms. *makes this chief-*Ibid.
ly a Court of the County of Kent.

Præcepit Rex Comitatum totum, absque morâ convenire & homines Comitatus omnes Francigenas & præcipue Anglos in antiquis legibus & consuetudinibus peritos in unum convenire.

But then it adds, & alii aliorum Comitatum Hominum and confirms, what *Eadmerus* says;

The Kings Commissioners were to pronounce the Judgment, in the Kings name or stead, So the Bishop P. 44, 45.

of Conſtance *did right to* Lanfranc. *The Inqueſt upon their Oaths found the Matter of Fact; the Judges ſtated it to the People, and delivered their Judgment, to which the* Primores, *and* Probi Homines *aſſented: For 'twas* Ex communi omnium aſtipulatione: *This agrees with what* Bracton *ſays of the Laws paſſed in the great Council of the Nation.* De Concilio, & conſenſu Magnatum, & Reipublicæ ſponſione.

A true Account of this Meeting at *Pinnedene*, will demoliſh our Authors *groundleſs Notion* of it, and his perverſe interpretation of *Eadmer*. Moſt, if not all the *Biſhopricks* and *Abbies* in *England*, were diſſeized of many of their Lands and Cuſtoms by the *Normans*, upon the *Conquerors* coming in, upon *Archbiſhop Lanfranc's*, application to him, with whom he adviſed in many of his Affairs, and the Mediation of other *Great Men*, he granted a General Writ for the reſtitution of whatſoever had been taken from the *Biſhopricks* and *Abbies*, all the Kingdom over, The *Form* was as followeth,

Some Gavelk. Append. *fol.* 191. The General Charter of *William* the Conqueror for Reſtitution of the Lands taken from Biſhopricks, *&c.*

W. *Dei Gratia Rex Anglorum, L. Archepiſcopo Cantuar. & G. Epiſcopo Conſtantiarum, & R. Comiti de Ou, & R. Filio Comitis* Gil. *& H. de Monte-forte, ſuiſque Aliis Proceribus Regni Angl. Salutem. Sumonete Vicecomites meos ex præcepto meo, & ex parte mea eis dicite, ut reddant Epiſcopatibus meis, & Abbatiis totum Dominium omneſq; dominicas Terras quas de Dominio Epiſcopatuum meorum, & Abbatiarum Epiſcopi mei & Abbates eis vel lenitate, vel timore vel Cupiditate dederunt*

derunt, vel habere consenserunt, vel ipsi violentia sua inde abstraxerunt, & quod hactenus injuste possederunt de Dominio Ecclesiarum mearum, & nisi reddiderint, sicut eos ex parte mea summonebitis, ut ipsos velint nolint constringite reddere. Quod si quilibet alius, vel aliquis vestrum, quibus hanc justitiam imposui, ejusdem Querelæ fuerit, reddat similiter quod de Dominio Episcopatuum vel Abbatiarum mearum habuit, ne propter illud quod inde aliquis vestrum habebit, minus exerceat super meos Vicecomites, vel alios quicunque teneant Dominium Ecclesiarum mearum, quod præcipio.

William, by the Grace of God, King of the English, To *Lanfranc*, *Archbishop* of *Canterbury*, and *Goisfrid*, or *Galfrid*, *Bishop* of *Constance* in *Normandy*, and *Robert*, *Earl* of *Ou*, and *Richard* the *Son* of *Earl Gilbert*, and *Hugh Montfort*, Greeting; Summon ye my Sheriffs by my Precept, and on my behalf Command them, That they restore to my *Bishopricks* and *Abbies*, their whole Demain (or perhaps rather all their Lordships) and all their Demain Lands, which my *Bishops* and *Abbats*, by *Fear* or *Easiness* Granted away, and consented they should injoy them; or that they by *violence* took away, and what they as yet unjustly possess of the *Demain* or Possessions of my Churches: and unless they shall restore them, according as you shall on my behalf give them notice, you may then constrain them to restore them, whether they will or not; and if any other, or any of you, to whom I have committed the doing of *Justice* in this Matter, shall be obnoxious to the same Accusation or Complaint

These were all Normans, and the Temporal Men, great Barons under *William*. *Vid. Dugd.* Baron.

Complaint; Let him restore likewise the *Possessions* of my *Bishoprieks* and *Abbies*, lest for that Reason any of you prove remiss towards such as hold any Possessions or Lands of my *Churches*.

This General Writ was the *Ground*, upon which the *Bishops* and *Abbats* proceeded for recovering their Lands; and besides those named in it, all his Great Men of the Kingdom of *England* were made Commissioners by it, who (as many of them as upon this occasion at any time thought fit to meet) directed their precept to the Sheriff, and he to the Suitors to the County Court, which were all * *Tenents* in *Military* Service (except *Barons*) and were bound to appear there, under great Penalties, both in the Saxon and Norman times.

* See the Answer, p. 39. & Gloss. Title *Liberi homines*, p. 27.

In Tryals of *Novel Disseisin*, and for the *Possession* of *Lands*, *Customs*, *Services*, &c. The *Juries* at the time of the Conquest, and in several of the *Kings Reigns* next succeeding, were impannelled out of the same Town and Neighborhood, of such as did **know** the Land, and things in question, and who had been possessed of it, and for what time. And to this purpose in an *Assize*, if *none* of the *Jurors* knew *the right it self*, *or truth of the Matter*, and did testifie so much to the Court upon Oath, Recourse was then had *to others*, until *such* were found, who did **know** the Truth; but if some did *know* the Truth, and *others* not, those that knew it not were put by, and others called

Grand Custom P. 93. c. H. 3.

Glanv. *lib.* 2. c. 17.

led into the Court, until 12 at the leaſt ſhould be found to agree therein. And for this purpoſe it was, that all Suitors to the Hundred and County-Court were bound to appear there under great penalties, that there might be a Jury of ſuch as knew whoſe the Land was.

In the Longobard or Lumbard Laws, and the *Capitularies* of *Charles* and *Ludovicus*, and in other old *German* Laws (and from *Germany*, both *Normans* and *Saxons* received theirs) we have almoſt the ſame Account of *Juries*, and they are there called *Teſtes*; and often in *Domeſday Book* it is thus found *Teſtatur Hundreda*, *Teſte Hundreda*; the *Hundred* witneſſeth, that ſuch Land is ſuch a mans, or by witneſs of the *Hundred*, ſuch Land is ſuch a mans; See the *Claims* in *Yorkſhire*, *Lincolnſhire*, and *Suffolk*, at the end of that Book.

And in as many *Counties* and *Shires*, as the Church of *Canterbury* had Lands, of which it had been *Diſſeiſed*, the Suitors to the County-Court where ſuch Lands lay, were by their ſeveral *Sheriffs*, ſummoned to appear at *Pinendene-Heath* in *Kent* (now *Pikenden-Heath* near *Aylesford*.) To give *Teſtimony* whether the *Lands* which **Lanfranc** claimed in their Counties, belonged to the *Archbiſhoprick*, or to **Odo** *Earl* of *Kent*; and it was a plain County-Court, held before Extraordinary Commiſſioners, Conſtituted by King *William*.

The

Text. Roff. cited by *Seld.* not in *Eadmer. fol.* 198.

The *Mannors* and *Lands* in Controverſie, being 25 *Mannors*, &c. lay in *Kent*, *Surrey*, *London*, *Midleſex*, *Buckinghamſhire*, *Oxfordſhire*, *Eſſex*, and *Suffolk*, though above two parts in three of them, lay in *Kent* only.

And the *Primores*, and *Probi viri*, not only of the County of *Kent*, but of other Counties of *England* were theſe *Jurors*, which conſiſted of the Great *Military Tenents* that were not Barons, and the leſs, which were the *Probi viri*, for it can be no ways probable, that the ordinary Freemen, which made the greateſt number, and were all bound to their good behaviour, could be the *Probi*, and *Legales homines*, which ſerved upon Juries.

See *Liberi Homines*, in the Gloſſary.

To make what is here ſaid more clear, we will take two of his own Inſtances concerning the *Abby* of *Ely*, the Abbat whereof was at this time ingaged upon the *Foundation* of this general *Warrant*, from the *Conqueror*, to recover the Lands that *Abby* had been Diſſeiſed of.

P. 41, 42.

Willielmus Anglorum Rex omnibus Fidelibus ſuis, & Vicecomitibus in quorum Vicecomitatibus Abbatia de Hely terras habet, ſalutem. Præcipio Abbatia de Hely habeat omnes conſuetudines ſuas, &c. has inquam habeat, ſicut habuit die qua Rex Edwardus, fuit vivus & Mortuus, & ſicut mea juſſione dirationatæ ſunt apud Keneteford, per plures ſcyras ante meos Barones, *viz.*

Galfridum Conſtantienſem Epiſcopum & Balwinum *Abbatem*, & Petrum

de

de Valonnus, *& Picotum Vicecomitem, & Tebeben de* Helion, *&* Hugonem *de* Hosden, *&* Gocelinum *de Norwicum & plures alios, Teste* Rogero Bigot.

William, King of *England*, To all his *Feudataries* and Sheriffs, in whose Sherifdoms the *Abby* of *Ely* hath Lands, *Greeting*. I Command that the *Abby* of *Ely* have all its Customs, *&c.* Those I say let it have, as it had them the day in which *King Edward* was alive and dead; and as by my Command they were proved to belong to it, at *Kentford* by many Shires, (That is by the *Militarie Tenents*, or *Suitors* to the County-Court of many Shires) Before my *Barons*, That is to say,

'Tis most probable this Writ of Possession was directed to his Feudataries, or Norman Subjects, because they had only possessed themselves of the Bishoprick and Abby Lands.

Galfrid Bishop of Constance, Baldwin the *Abbat*, Peter *de* Valoniis, Picot the Sheriff, Tehel *de* Helion, Hugh *de* Hosden, Gocelin *de* Norwico, and many others witness Roger Bigod.

These were all Normans and *Tenents in capite.*

His Second Instance which I make use of.

Willielmus Rex Anglorum Lanfranco Archiepiscopo, & Rogero Comiti Moritonio & Galfrido constantiensi Episcopo salutem. Mando vobis, & praecipio ut iterum faciatis omnes scyras quae interfuerunt placito habito de terris Ecclesiae de Hely antequam mea Conjux in Normaniam novissime veniret. Cum quibus etiam sint de Baronibus meis qui competenter adesse poterint, & praedicto placito interfuerunt, & qui Terras ejusdem Ecclesiae tenent. Quibus in unum Congregatis, Eligantur plures de illis Anglis qui sciunt quomodo

The Conquerors Writ of of Right and Possession joyned in one.

modo Terræ jacebant prefatæ Eccleſiæ die quo Rex Edwardus obiit, & quod inde dixerint ibidem jurando teſtentur. Quo facto reſtituantur Eccleſiæ Terræ quæ in Dominico ſuo erant, on the day of the death of King *Edward*, *&c.*

William King of *England* to *Archbiſhop Lanfranc*, *Roger Earl* of *Moreton*, and *Geoffrey Biſhop* of *Conſtance*, *Greeting*, I Command you that again you cauſe to be Aſſembled, the Shires which were preſent, at the Plea or Mote held, concerning the Lands of the *Church* of *Ely*, before my Wife laſt came into *Normandy*.

* This is a Confirmation of what is found in *Glanvil*, and the Grand. Cuſt. That Juries were impanelled of ſuch that knew the right of the thing in queſtion, which in this caſe could be none but Engliſh.

With whom alſo may be preſent as many of my Barons, as well there can; Who were preſent at the ſaid Plea, and do hold the Lands of the ſaid Church, Who being Aſſembled, may * chooſe many of ſuch Engliſh, as know how the Lands belonged to the ſaid Church on the day of *King Edwards* death, and what they ſhall then ſay, let them teſtifie upon Oath, which being done, let the Lands be reſtored to the Church, of which it was poſſeſſed of, the day of *King Edwards* death, *&c.*

This being premiſed concerning Tryals for Lands upon Writs of Novel diſſeiſin (where Tenents or Poſſeſſors of Lands had been lately diſſeiſed) in general, and concerning the ſame Tryals or Writs brought, and Recoveries made of their Lands, by the Church of *Ely* in particular; we will ſee whether our Au-

thor

thor underſtood the words of *Eadmer*, or not, he ſays,

*Præcepit Rex, quatenus adunatis primoribus & probis viris non ſolum de Comitatu Cantiæ, ſed & de aliis Comitatibus Angliæ, Querelæ Lanfranci Ducerentur Examinarentur, Determinarentur, diſpoſito itaque apud Pinnedene * Principum conventu, Godfridus Epiſcopus Conſtantienſis, Vice Regis Lanfranco Juſtitiam de ſuis Querelis facere juſſus, fecit. Lanfrancus enim validâ ratione ſubnixus, ex comuni omnium aſtipulatione & Judicio, ibi cuncta recuperavit quæ denſa ſunt (a) antiquitus ad jura Eccleſiæ Chriſti Cantuarienſis pertinuiſſe tam in terris quam in diverſis conſuetudinibus.* Fol. 9, n. 43.

The King Commanded, that the Chief, and Honeſt Men, not only of *Kent* but of (*b*) other Counties of *England*, being called together, the *Plaints* of *Lanfranc* ſhould be Propounded, Examined, and Determined. Therefore (*Diſpoſitio apud Pinnedene Principum Conventu*) The (*c*) *Barons*, Kings (*d*) *Commiſſioners* or *Court* being ſett at *Pinnedene*, *Geoffrey* Biſhop of *Conſtance* in the Kings ſtead, did *Lanfranc* Juſtice concerning his Demands, as he was Commanded. For *Lanfranc* ſupport-

(*a*) Thoſe which *Eadmer* and *Text. Roſſen.* do call *Principes*, are in the Conquerors General Writs, and in *Ely* Caſe, called *Proceres & Barones*. (*b*) That is, *Die qua obiit Rex Edwardus*, as in *Ely* Caſe, and the Abby of *Ramſeys* Caſe, *Anno. Gloſſar. verbo Hundred.* and many others. (*c*) Where the Church of *Canterbury* had Lands, as in the Caſe of the Church of *Ely*. (*d*) The Barons, Princes, or Kings Commiſſioners, were *G.* Biſhop of *Conſtance Rich. de Tunebrigge*, *Hugo de Monteforti*, *Ws. de Arces*. *Haymo Vicecomes*, and many others of the Kings Barons. *Seld. Not. in Eadm. fol.* 199. n. 10. from *Text. Roſſ.*

ed

ed by *strong Reason*, by the *common Suffrage* and *Judgment* of all of them (*id est*, of the Princes or Barons) recorded all things which were made * appear to have been the right of *Christ-Church* in *Canterbury*, as well Lands as Customs.

* By the Testimony of the *Primores & Probi Homines*, or *per plures Scyras, ante multos Barones*. As above in the Case of the *Abby* of *Ely*.

Let any sober knowing Man consider this *Relation* of *Eadmer*, and think with himself whether he can from thence collect, and say with our Author, That *Probi Homines* are by variation of the phrase, *Conventus Principum*, That this Meeting at *Pinnedene* (or County-Court, upon an extraordinary Precept, directed to the Suitors of many Counties, to appear before special Commissioners) looks very like a General Council of the whole Nation; or that it was more than a Court of the *Kings Tenents* and *Officers*, and more than a *County-Court*. Or how it was *adunatio conciliorum*, an uniting of Councils, when as this *whole Assembly* can no ways claim the *Title* of a *Council*. Or Lastly, That the Judgment which was pronounced in the *Kings* name by *Geofrey*, *Bishop* of *Constance*, with the assent of all the other *Princes*, *Barons*, or *Kings Commissioners*, was by the common astipulation of all the Primores and Probi Homines, and that without their consent it had not been *Authentic*, as he insinuates, but without all colour of Reason.

Not. in *Eadm. fol.* 199. n. 40.

For the contrary is evident from the words of *Eadmer* as above, and is made yet more apparent from the Account, we have of this

placitum

Placitum or *Mote* in *Textus Roffenſis*, cited by *Selden*, *Hujus Placiti multis Teſtibus, multiſque rationibus determinatum finem poſtquam Rex audiverit, laudavit, laudans cum Conſenſu omnium principum ſuorum Confirmavit, &c.* After the King heard this Plea was determin'd (a) by many Witneſſes, and many Reaſons, he approved what was done, and confirmed it by the conſent of all his *Princes* or *Barons*, that is, by a *General Council* or *Parliament* of that time.

The King and Great Council confirm the Judgment given at *Pinnedene*.

(a) Which were the Jurors or *Primores*, or *Probi Homines*.

But if no Judicious Perſon can ſay he hath rightly deduced theſe his Aſſertions from the Story; it will be hard to judge whether his Ignorance or Confidence is the greater: however, he is ſomewhat more modeſt than Mr. *Petyt*, who ſays this Judgment was given, **and tells us**, *Eadmer* reports it to have been given, *Aſtipulatione totius Regni*, in his Right of the Commons Aſſerted, p. 46.

Eadmer hath nothing more of this matter but in this place, and the next Paragraph, where are no ſuch words.

The Parties aſſembled at the (b) **Council** *of* **Pinnedene**, were the **Primores** and **Probi Viri**, of the *Counties concerned*, which *anſwer to* the **Proceres** & **Fideles Regni**, in the *Union* of all the *Counties in Parliament*, *as in the* 42 *Hen.* 3. *which in another Record are branched out into*, **Hauz Homes**, & **Prodes Homes**, & **du Comun de Noſtre Reaume**. *That is*, as the *Statute* of the *Staple has it*, *the Prelates*, *Dukes*, *Earls*, *Barons*, *the great Men of the Counties*, *Grands des County's*, *as the French*, *and the Commons of the Cities and Burghs.*

Pag. 46.

(b) It was no Council, ſee above.

Rot. Pat. 42 *H.* 3. M. 4.

How far the *Primores* and *Probi Homines* assembled at *Pinnedene*, answered to the *Proceres & Fideles Regni*, see before what hath been said of that Meeting.

See this Record at the end of the Animadversions. (c) See the Answer, p. 1. 9.

The French Record he cites 42 *Hen.* 3. was a Commission, by which in pursuance of the *Oxford* (c) *Provisions* the King was forced to appoint Twenty Four Persons which were to order the State of the Realm, though the Record runs thus, *Henr. par la Grace Dieu Roi Dengl.* &c. *à touz ceux*, &c. *sachiez que par le profit de nostr. Reaume, & à Requeſt de nos* Hauz Homes, & Prodes Homes, & du Comun de *nostr. Reaume*, Otrepames que vint *quatre de nos Homes*, &c.

Pat. 42 H. 3. M. 4.

Have granted that 24 of our Men, &c.

The Twenty Four by the same Record had Power to chuse Four who had Authority to chuse the *Kings Council*; *Les quels vinte quatre deſus nomez Eſturens quatre, as quels quatre il Donerent lour poer de Eſlire noſtr. Conſeil des* Prodes Homes *de noſtre terre*, &c. Which *Twenty Four* under-named shall chuse Four, to whom they shall give their Power to chuse *our* Council of the Wise Men of our Land, &c.

Hauz in this Record is the same that *Hauts*, Men of *High Degree*, *Proceres Magnates*, &c. and were the great Barons. And Prodes Homes for *Prudes Homes*, (for so I have seen it written, though I cannot call to mind the Record) *Viri Prudentes*, or *Sapientes*, *Wise*, *Discreet*

great Men, not *Probi Homines*, as our Author would have it, for certainly the ordinary sort of *Freeholders*, which he means by the *Probi Homines*, or the Jurors which are called *Probi* and *Legales Homines* in our ancient *Lawyers*, *Records* and *Histories*, were never Members of the *Kings Council*, which according to this Record was to be, des Prodes Homes *de contr. Terre*, of the *Wise Men* of the *Kingdom*, and these Pauz Homes and Prodes Homes, were no other than *Viri Nobiles ac discreti*, as *Paris* call them that were sent to the Council of *Lyons* in the Name of the whole University of the Kingdom, about the *Papal Excesses*, &c. who were Earl Roger Bigod, John Fitz Geofry, William de Cantelup, Phillip Basset, Ralph Fitz-Nicholas, all great Barons, and Mr. William Potveric then Secretary. See Answer, p. 149.

Et du Comun de nostr. Reaume, what the Communitas Regni, the *Community of the Kingdom*, was in these times, see Answer from p. 110. to 132. and from p. 149. to p. 167. it was only *Communitas Baronum*, or *Universitas Baronagii*; and for the *Comparison* he makes of those mentioned in this Record, with those that made the *Statute* of the *Staple*, 'tis very idle, for that was beyond the time he hath limited himself by, and was after the *great Council or Parliament* had *received* so great an alteration in the 49th *Hen.* 3. this Stat. being made 27 *Ed.* 3. 1353.

Pag. 47. *That Freeholders had the Appellation of* Milites, *is evident by many Records.*

Milites and common Freeholders not the same.

I will not deny that *Milites* were Freeholders, but they were *Liberi Tenentes in servitio Militari*, Freeholders in Military or Knights Service, and not the ordinary *Common Freeholders* as at this day which he intends. See *Gloss.* in the words *Milites*, and *Liberi Homines*, and Answer, p. 150.

Pag. 54. *In the Fourth of this King (meaning* William *the First) the Controversie between the Archbishop of* York *and the Bishop of* Worcester *was determined at* Pedred, *before the King, Archbishop* Lanfranc, *the Bishops, Abbats, Earls, & Primatibus totius Angliæ; this Mr.* Selden *rightly calls a Parliament; which is easily to be gathered from the large and comprehensive signification of Primates.*

R Hoveden, f. 463. Fol. 260. a. n. Lon. Edit. Hoveden's *words are, Wulstani Querela, in Concilio in loco qui vocatur Pedreda Celebrato, coram Rege ac Doroberuia Archiepiscо Lanfranco & Episcopis, Abbatibus, Comitibus & Primatibus totius Angliæ, est terminata.*

It's

It's enough this Gentleman thinks to say only that Primates was a word of a *large* and *comprehensive* signification to prove that there were more than *Tenents in Capite* in this Great Council, which he owns to be a Parliament in his own sense, and says, *Selden* rightly calls it so. In which place of *Selden* he might easily have observed his *opinion* of the *signification* of *Primates*; under which he tells us, the *Temporal Barons* being not *Earls* were comprehended, although sometimes the same word, as *Proceres* or *Magnates* comprehend both them and the rest also: that is, both the *Spiritual* and *Temporal* Barons.

Tit. hon. fol. 580.

Many such Instances as this he brings of great Councils in the Reigns of *William* the first, and second, *Henry* the first, King *Stephen*, *Henry* the second, *Richard* the first, to prove these were *more* than *Tenents in Capite*, nay ordinary *Freeholders* in them: But in the words he himself cites them in, the *Primates*, *Primores*, *Proceres*, *Magnates*, and *Nobiles* are always the constituent parts of them; or the *Clerus* and *Populus*; which when he evinceth them to be, and those words to *signifie* the *Common Freeholders*, as at this day, or that ever there was an *adunation* (as he calls it) of all the *Freeholders* in *every County* in a *General Council*, I will be of his opinion.

From p. 54 to p. 219.

For the meaning of *Clerus* & *Populus*, see Answer from p. 56. to p. 63.

P. 191. Magn. Charta c. 11.

But it lies upon me to shew when and how the Curia Regis *went off, Communia placita non sequantur Curiam nostram sed teneantur in aliquo loco certo. Hereby the Administration was taken from the* ordinary Curia, *and fixed at the Courts in* Westminster.

The Kings *ordinary Court*, or at least a great part of it, remains still, *viz.* the *Kings Bench*, and went not off by reason of this *Article* in *Magna Charta*, and he would have found a better reason in *Britton*, how the *Kings ordinary Court went off*, or rather was branched out and divided into several Courts and Jurisdictions, because the *King* was not *sufficient* to hear and determine all the *Complaints* of his People, *&c.* as we have said before in shewing what the *Kings ordinary Court* in ancient time was. Nor could this *Clause* in *Magna Charta* be any ways prejudicial, or abate the Power and Jurisdiction of the Common Council of the Kingdom mentioned in King *John's Charter*, (he making *that* all along in his Discourse the *Curia ordinaria*) for those words, *Communia placita non sequantur Curiam nostram, sed teneantur in aliquo loco certo*, are in King *John's Magna Charta*, within five lines after the provision made for the *Summons* of the *Great Barons*, and all *other Tenents in Capite*, which were only the Constituent parts of that great Council: So that if this *Council* summoned as there is directed, were the *Curia Regis Ordinaria*, and went off by reason of this Clause,

p. 1. a. & *Bracton* Fol. 108. a.

Paris fol. 257. n. 30.

Clauſe, it certainly *went off* before it began; which could not be: And 'tis manifeſtly proved in the Anſwer, that after the *Granting* of this *Charter* by *King John*, there were many General and Great *Councils*, or *Colloquiums* ſummoned by *Edict* according to the form there preſcribed.

And if any Man deſires to know the *peers* of theſe *Great Councils*, and how they went off, let him read the *Hiſtorical Account* of the *Parliament* 49th of *Hen.* 3. in the Anſwer, p. 196. 197. *&c.* too long to be inſerted here.

From p. 193. to p. 219. this Author labours much, to invalidate the Right of the Biſhops to Vote in Capital Cauſes, and thinks he hath wholly defeated the ſolid and learned Treatiſe, called, *The Grand Queſtion*, &c. But if he thinks fit to read over that Book once more, and to obſerve it well, and compare it with what he hath ſaid, he will find it anticipated, and anſwered; and if he hath not a mighty ſtrong Fancy of his own Abilities, muſt be aſhamed of his Impertinent Rhapſodie. There is nothing ſaid worthy the notice of this learned Author, and the Controverſie is foreign to my Deſign.

p. 219. *I shall give* (saith the Author of this new Tract) *one plain Instance of a great Council, and another of an ordinary Court in this Kings Reign* (*meaning* Hen. 2.)

Benedictus Abbas, p. 72 in Bib. Conc. Jur. A xi. *Circa Festum Sancti Pauli venit Dominus Rex usq; Northampton & magnum ibi celebravit Concilium de statutis Regni sui coram Episcopis, & Militibus & Baronibus Terræ, & coram eis per eundem Concilium Comitum & Baronum, Militum & Hominum suorum hanc subscriptam assisam Fecit*, &c.

This was more than an ordinary Curia, and there being the Barones terræ, *the* Milites & Homines sui, *are not to be taken for his Feudal Tenents, but his Liege People.*

Notwithstanding, the *Barones Terræ* are mentioned in this Great Council, why are the *Milites & Homines sui*, the Kings Feudal Tenents? in King *Johns* Charter 'tis said, that all the *Great Barons* (which properly were *Barones Regni*, *Barones Angliæ*, or *Barones Terræ*) should have particular Summons; *& omnes alii qui de nobis tenent in Capite*; all others that held of the King in Chief, which here are expressed by *Milites & Homines sui*, should have general Summons by the Sheriffs of Counties. So that this is a plain Instance of a great Council, according to King *Johns Charter*, and proves that to be more than a *ordinary Curia*. And further, If the *Milites & Homines sui* were not the Kings *Feudal Tenents*, but his *Liege People*, That is, the Kings Subjects in general, then *Tradesmen*, *Servants*, and vast numbers of others of the Kings *Liege People*, were Mem-

Milites & homines sui were the Kings feudal Tenants

bers

bers of this *Great Council*, which no Body, I think but himself and Mr. *Petyt* will averr.

In Page 49 he says, *Fulcherus hama Viceconitii*, was his Tenent in *Knights Service*; and why are not *Homines sui*, that is, *Regis*, the Kings Tenents in *Knights Service* in this place? that is, his *Tenents in capite*, or *Feudal* Tenents; he ought to give some reason for his Confidence, before he can think to be believed.

2 *Roger de Hoveden*, at this time one of *Hen.* 2. Clerks repeats the constituent parts of this great Council, somewhat otherwise than they are found in *Benedictus Abbas. An. Gratiæ* 1176. *Post natale Domini in Festo conversionis Sancti Pauli venit Dominus Rex Pater usq; Nottingham, & ibi celebravit magnum concilium de statutis Regni & coram Rege Filio suo, & coram* Archiepiscopis, Episcopis, Comitibus & Baronibus *Regni sui, Communi omnium concilio, Divisit Regnum in sex partes, per quarum singulas sites Justiciarios itinerantes Constituit*, &c. In the year of Grace, 1176. after *Christmass*, in the Feast of the Conversion of *St. Paul*, King *Henry* the Father came to *Nottingham*, or *Northampton*, and held a Great Council there concerning the Statutes of his Kingdom, before the *King* his *Son*, and before the *Archbishops*, *Bishops*, *Earls* and *Barons* of his Kingdom.

Hoved. fol. 313. *a. n.* 50.

'Tis probable it should have been *Northampton* as in *Ben. Abbas.*

King *Hen.* the seconds Son. was Crowned King in his life time, and dyed before his Father.

The

The *Milites & Homines sui*, being *Tenens in Capite*, were here comprehended in the word *Barones*, and 'tis very usual for the *Tenens in Chief* to be stiled *Barons*. Histories are full of Instances every where, and it is needless to produce any; of these consisted the Baronage of *England*, as in the Answer P. 146. Notwithstanding, 'tis highly probable that the *Great Barons* were ever *Created* by *Ceremony*, as Mr. *Essynge* seems to have proved in his manner of holding Parliaments, from *p.* 28. to *p.* 46. and there is a notable Instance in *Hoveden* to this purpose. *Eodem Die Coronationis suæ Johannes Rex accinxit* Willielmum Marescallum *gladio Comitatus de* Strigul, *&* Gaufridum *filium* Petri *gladio Comitatus de* Essex. *Qui licet antea* vocati *essent* Comites, *& administrationem suorum Comitatuum habuissent, tamen non erant accincti* Gladio *Comitatus.* Other Ceremonies were anciently used in the *Creation* of *Earls*, *Barons*, &c. as *Investiture* by *Robes*, Delivery of *Banners*, *Gold Rings*, &c. but not all of them perhaps here in *England*.

Sheet 9. Fol. 451. *a.* *n.* 40. *Anno Dominī* 1199.

This Relation of *Hoveden*'s of the same Council, is a clear Explication, of the other in *Benedictus Abbas*, who in all probability was *Abbat* of *Peterborough*, and wrote the Life of *Henry* II. and died before *Hoveden*, whom he mentions as one of the *Kings Clerks*, *p.* 65. *a.* or *b.*

Pitsæus.

This

This Instance of a great Council being dismicht which no knowing man can think that consisted of any other persons than *Tenents in Capite*. I come to his second Instance concerning the *Curia Ordinaria*, or the Kings Ordinary Court.

This Instance is taken out of Sir *Henry Spelman*'s Glossary in the word *Finis*; and 'tis from the *Form* of a *Fine* Levyed in the *Ordinary Curia*. p. 219. 220.

Hæc est finalis Conventio facta in Curia Domini Regis apud Clarendum Anno 33 Regis Hen. secundi coram Domino Rege & Johan. filio suo & aliis Baronibus & fidelibus qui tunc ibi præsentes erant, &c.

At *Clarendon* in *Wiltshire* our antient Kings had a Pallace.

The words in *Spelman* are these, *Hæc est finalis Conventio, facta in Curia Domini Regis apud Clarendum anno* 33 *Regni Regis Hen. secundi, coram Domino Rege & Johanne filio Ejus & Ra. de Glanvil & Hubert Decan. Ebor. & Rad. Archidiac. Hereford. & Robert. de Witefield, & Roger. fil. Reinfr. & Roberto de Ingleſham Archidiac. Gloceſtr. & Joſel. Archid. magiſtro Thoma de Buſſecurn, Mich. Belet, & aliis Baronibus, & fidelibus Domini Regis qui tunc ibi præſentes erant.*

This is the *Final Agreement* made in the Court of the Lord the King at *Clarendon* in the 33 year of the Reign of *King Henry* II. before the Lord the King, and *John* his Son, and *Ranulph de Glanvil*,

vil, and *Hubert Dean* of *York*, and *Ralph*, *Arch-Deacon* of *Hereford*, and *Robert de Witefeld*, and *Roger Fitz-Reinfrid*, and *Robert de Ingle-sham Arch-Deacon* of *Glocester*, and *Josel Archd.* *Mr. Thomas de Bussecurn*, *Mich. Belet*, and other *Barons* and *Feudataries of the Lord the King which were then present.*

The most of these Persons, Arch-Deacons and others were the Kings *Justices*; and at this time his Court was wheresoever he was; The very same year there was a *Fine* Levied *in Curia Regis apud Catuariam Die veneris prox. post festum Sancti Johannis Baptistæ* present *Rad. Arch-Diac. Colcist. Roger. fil. Reinfrid, Robert de Witefeld, Mich. Belet.* The very same Justices.

Hugd. Chron. Series. Fol 4. Annis 26. & 33 Hen. 2. Ibid.

This was certainly an ordinary Court, such as is described before in these Animadversions, and was holden before the King and his *Council*, *Coram Rege & Concilio*, his Privy Council, and that was the Reason of the Addition of, *& aliis Baronibus & Fidelibus Domini Regis qui tunc ibi præsentes erant*, after the Justices.

But this was no such *Curia*, or *Common Council* of the Kingdom, as is mentioned in King *John's Charter*, which all along he hath from the beginning of his Book, affirmed, was a *Curia Ordinaria*, for the dispatch of *Ordinary Business* only. If he can make the Court holden *Coram Rege, & Consilio*, before the King and Council, which he hath made

his

ing Instance for his Ordinary Court, and be the same with the *Common Council* of the Kingdom, established by that Charter, he gains the Point; but if that cannot be done, he may very well blush at his own *Confidence*, to say no more.

When this Common Council of the Kingdom established by King *John*'s Charter ceased to be, after the 49th of *Henry* III. yet the Kings Ordinary Court continued in the several Kings Reigns, in all its Branches, Divisions, and Derivative Jurisdictions, and therefore not the same; for the *Kings Bench*, and *Common Pleas*, those two parts of it which were Stationary in *Westminster Hall* there can be no doubt made of them; and for the Court also which retained the Title of *Coram Rege & Concilio*, there is a notable Case and Record cited by Sir *Edward Coke*.

The Kings ordinary Court remained after the Common Council according to King *John*'s Charter was abolished.

4. Institut. fol. 60.

A Suit depending before the King and Council between the *Abbat* of St. *Austins Canterbury*, and others, concerning Wrecks, &c. The Abbat brought his Action at Common Law against the Parties, who being thereupon Arrested and Imprisoned, the Sheriff was commanded, by the Kings Writ to Deliver them, and to forbear to serve any Process against them, and the Reason there given (saith Sir *Edward*) is notable.

Quia non est juri Consonum, aut honestum, quod aliquis de his quæ coram nobis & Concilio nostro in Discussione pendent, alibi inde interim

Rot. cl. 16. Eliz. 2. (m) 11. Dors.

rim placitari debeat aut apparere. That is, because it is not Consonant to right, or honest, That any Man should be *impleaded*, or appear any where for any things, that are in dispute before *Us* and *our Council*.

What hath been said in the *Canvassing* these two *Instances*, and what delivered before about the Kings Ordinary Court, may satisfie any Man concerning this Authors own *Groundless* Notion of *Curia Ordinaria*, and *Generale Concilium*, and are sufficient to discover his Ignorances in that he hath cited Records and Histories, and given Instances directly against himself.

p. 220. Note *Parlamentum* for *Colloquium.*

Rex Congregatis Episcopis Comitibus, & Baronibus Regni sui Parlamentum habuit generale tum. This says, our Author was manifestly more than the *Curia Regis*. True; it was manifestly a Common Council of the Kingdom, as it was afterwards established by King *John*'s Charter. Here was never a Freeholder but such as held of the King in *Military Service*, that is, *Tenents in Capite*.

p. 221. His Elder Brothers Son *Arthur* D. of *Britain* was then living.

King John says in one of his Charters he was to the Crown jure hæreditario, mediante Cleri quam populi unanimi consensu & favore.

Congregatis Archiepiscopis, Episcopis, Comitibus & Baronibus & aliis omnibus. I shall add what the Gent. hath left out, *qui hujus Coronationis interesse debuerant*; which relates to the *aliis omnibus*. Paris fol. 197. (n) 20. Ibid. p. 221.

I cannot see to what purpose he useth these Citations; however, for his satisfaction, the Reader may see how *King John* came to the Crown, in the Answer, *p.* 71. &c.

From London King John issues out Summons to William King of Scots to attend him at Lincoln, which Summons he was obliged to obey as one of his Tenents in Chief; nor was it the place or time of the Curia de more, and therefore the Curia and General Council was united; the King of Scots coming as Attendant upon the Curia, Convenerunt interea ad Colloquium apud Lincolniam, Rex Anglorum Johannes & Rex Scotorum Willielmus cum universa Nobilitate tam Cleri quam Populi utriusque Regni undecimo Kalendas Decembris. As under the Nobility, the Senators of Scotland, were comprehended all the Freeholders at that time beyond Dispute, 'tis probable at least, That our Nobility was of the same extent. And for the Probability of the Assembling of so great a Body as the Proprietors of both Kingdoms must have made even then, 'tis observable that the Meeting was without the Walls; for the City was not able to hold them. The King of Scots did Homage upon a Mountain in conspectu omnis populi, before all the People, the United Body of the Freeholders of both Kingdoms. p. 212. *Mat. Paris.* 196. so cited by our Author p. 223.

The

Fol. 204, n. 30. 40. Anno Dom. 1200, I. Joh.

The words of *Mat. Paris* from whence this Gentleman had the Story are these: *Convenerunt ad Colloquium apud Lincolniam,* Rex *Anglorum Johannes &* Rex *Scotorum Willielmus cum universa* Nobilitate *tam* Cleri *quam* Populi *utriusque Regni Undecimo Kalendas Decembris. Et eodem die Convenerunt ipse &* Rex *Scotorum Extra Civitatem in* Montem ardium, *& ibi in Conspectu Omnis Populi,* Willielmus *Rex Scotiæ fecit* Homagium *Regi Johanni de omni Jure suo; & postea Juravit ei Fidelitatem, super Crucem Huberti Cantuariensis Archiepiscopi, de Vita & Membris & terreno honore terreno Contra omnes homines Coram Cunctis* Magnatibus *Regni.* John King of *England*, and *William* King of *Scotland*, met at a Conference at *Lincoln* with all the *Nobility*, as well of the *Clergy*, as *Laity*, of both Kingdoms, upon the 21st of *November*; and the same day they met upon a *Steep Hill* without the *City*, and there in the sight of all the People *William* King of *Scotland*, did *Homage* to King *John* for all his *Right*, and afterward sware *Fealty* to him upon the *Cross* of *Hubert Archbishop* of *Canterbury*, of *Life* and *Limb*, and Terrene Honour against all Men, before all the *Great Men* of the *Kingdom*. This is all *Paris* hath of this Story.

See the Answer p. 56. why in this place *Populus* is to be turned *Laity*, and in other parts of it

And he hath it from *Hoveden*, and transcribes his words; yet *Hoveden*'s *Relation* is more full and clear, and I therefore transcribe so much of it, as is necessary, because he lived also, and wrote at the very time, and also be-

because it will detect this Writers monstrous abusing of *History*.

Johannes Rex Angliæ *statim post Coronationem suum misit Philippum Dunelmensem Episcopum*, &c. *John* King of *England*, soon after his Coronation, sent *Philip* Bishop of *Durham*, *Roger Bigot* Earl of *Norfolk*, *Hen. de Boun*, Earl of *Hereford*, *David* Earl of *Huntington*, the King of *Scots* Brother, *Roger Lacy* Constable of *Chester*, *William de Vescy*, *Robert de Ross*, and *Rob. Fitz-Roger*, Sheriff of *Northumberland*, to William King of *Scots*, with Letters of safe Conduct, to bring him to the King of *England*, and appointed him a day to meet him at *Lincoln* in *Crastino Sancti Edmundi*; and then it follows within a few lines, *Undecimo Kalendas Decembris*, (which is the 21 of *November*) *feria tertia Johannes Rex Angliæ & Willelmus Rex Scotiæ Convenerunt apud Lincolniam, & in Crastino*, viz. 10 *Kal. Decemb. feria quarta Johannes Rex Angliæ intrepidus & contra consilium Multorum, intravit Ecclesiam Cathedralem Lincolniensem & obtulit super Altare Sancti Johannis Baptistæ quod est in novo opere* Calicem *aureum. Deinde eodem Die ipse &* Willelmus *Rex Scotorum Convenerunt ad Colloquium extra Civitatem Lincolniæ super Montem arduum, & ibi in conspectu omnis populi Willelmus Rex Scotorum devenit* homo *Johannis Regis Angliæ de jure suo, & juravit fidelitatem super crucem Huberti Cantuariensis Archiepiscopi de vita & Membris, & terreno honore suo contra omnes homines, & de pace servanda sibi & Regno suo, salvo jure suo*; Testibus his. *Huberto*

Hoved. Pol. 461 b. lin. 4 & n. 10. 20. 30.

That is the 21 of *November*.

Huberto Cantuarienſi Johanne Dublinienſi, Bernardo Raguenſi Archiepiſcopis (This laſt *Bernard*, Archbiſhop of *Raguſe* might probably be the Popes Legate) Eleven other Engliſh and Welſh *Biſhops*, and the *Biſhop* of *St. Andrews* in *Scotland*. *Geoffrey Fitz-Peter*, Earl of *Eſſex*, and *Juſticiary* of *England*, eight *other* Earls, the Prince of *Galway*, *Patrick* Earl of *Lonais*, *Griffin*, Son to *Reſe*, King of *South-Wales*, and many others of the Kingdom of *Scotland*, and before the **Barons** of *England* and *Normandy*, *Roger Conſtable* of *Cheſter*, *Euſtace de Veſcy*, and *Robert de Ros*, and fourteen others there named, *& aliis multis de Baronibus Angliæ & Normanniæ*; and many others of the *Barons* of *England* and *Normandy*. Theſe Biſhops, Earls and Barons were thoſe which *Paris* calls **Magnates** *Regni*, when he ſaies this great ceremony was performed before all the great Men of the Kingdom. *Facto itaque homagio ſuo, Willielmus Rex Scotiæ petiit à Johanne Rege Angliæ Domino ſuo totam Northumbriam, & Cumbriam, & Weſtmerland ſicut jus ſuum & hæreditatem ſuam.* Of which King *John* took time to conſider until *Whitſunday* following; all this was done on the 10th of the *Calends* of *December*, or 22 of *November*, and the next morning, (*in craſtino ſummo mane* viv. *Nono Kal. Decembris*) *William* King of Scots returned into his own Countrey, under the Conduct of thoſe that brought, or conducted him to the King of *England*.

Ibid. n. 40.

Whoever

Whoever consideratively reads either of these Relations, but especially this last of *Hoveden*, cannot but wonder at the *Confidence* of this Writer, who pretends to find out both an *ordinary Court* and *General Council* in this Assembly, which was only designed to attest, and see the Homage of the King of *Scots* done to the King of *England*, and to make it more notorious and conspicuous, which was the reason of the circumstance of its being performed upon a steep Hill without the City, that the People might see it done and take the more notice of it. And that this was the only *Business* of this Meeting 'tis certain, because we find no Summons to it, nor other Matter transacted in it.

It is admirable how he finds out of the Relation of *Paris*, to which he confines himself (to use his own words) That under the *Nobility* of *Scotland* were comprehended all the *Freeholders* without dispute, and that 'tis probable, at least, that the *Nobility* of *England* was of the same Extent; That is, that all **Freeholders** were **Noblemen**. 'Tis *marvellous* how he finds the united Body of Freeholders of both Kingdoms at this meeting at *Lincoln*, had it been safe for the Kingdom to have admitted so great numbers of Scots? How should the Nation have got rid of them? we had but a small parcel of the ordinary ones, about 34 or 35 years since, and we were forced to Swear and Covenant with them, and give them a round sum of Money to be gone. 300000 l. 'Tis mighty strange, That the English Noblemen who went to conduct the King of

Scots, ſhould go thither, and that he and the Body of the *Freeholders* of his Kingdom, ſome whereof muſt come from the furtheſt part of *Scotland*, ſhould come together in *Scotland*, when the days were almoſt at the ſhorteſt, and march from thence to *Lincoln* in 44 *days time*; more they had not, for *King John* was *Crowned* at *Weſtminſter* on the 8th of *October*, and it was after his Coronation he ſent a Convoy for the King of Scots, with Letters of ſafe Conduct, and he came to *Lincoln* the 21 of *November*, which makes but 44 ſhort days; all his deductions from this Story are ſo far remote from Reaſon and Senſe, that no Man but himſelf could ever have thought of them. Theſe are his *Coments* upon, and this the Work he makes, with all the *Fragments* of Records and Hiſtory he makes uſe of.

Ibid. fol. 461. a. n. 40.

P 225.

Nine Knights throughout the Kingdom to find a Tenth.

And then I take it (*in the year* 1204.) *Proviſion was made for the Defence of the Kingdom,* (viz.) *That every nine Knights throughout the Kingdom ſhould find a Tenth armed at all points to be ready in* Servitio noſtro ad defenſionem Regni quantum opus fuerit. *This to be ſure reach'd further than to the Knights, by Military tenure, becauſe every one that held a Knight's Fee, was by his tenure to find a Man, and conſequently this would have weakened the Kingdom to abate of their Services, but it muſt needs have extended to all that held to the value of a Knight's Fee, though not by Knights Service. This was provided* Communi aſſenſu Archiep. Ep. Comitum & omnium fidelium noſtrorum Angliæ *And ſo a general Land-Tax.*

Rot. Pat. 6 Johannis M. 3. Dorſ.

Whether

Whether the nine Knights were *Tenents* in *Military Service*, or *Freeholders* in *Soccage* tenure, that is, ſuch as our Common Freeholders, are at this day; or whether the Money the tenth Knight was to receive for his wages, was raiſed by a *general Land-Tax*, the *Record* it ſelf will determine it; 'tis worth obſerving, and here Printed N. 3. This Record is here interpreted, at the common rate of this *Writers Comenting*.

The Baronagium, or omnes fere Angliæ Magnates *refuſed to give a Royal Ayd demanded of them, the ground of their refuſal is very remarkable.* Quod omnes tunc temporis non fuerunt juxta tenorem Magnæ Chartæ ſuæ vocati. *This ſame would render, and call King* Johns *Charter, and that the complaint was, that the Peers had no their particular Summons, according to the Tenor of that Charter. But it is* Chartæ ſuæ, *not* Chartæ Regis Johannis Patris Regis nunc. *'Tis the then King* Henry *the Thirds Charter.* P. 237. *Paris, f* 913. n. 40. *Ann. Dom.* 1255. 39. *Hen.* 3.

King *Johns* Charter and King *Hen.* the 3. his Charter, will appear to be, and were the very ſame, notwithſtanding his unintelligible Reaſons to the contrary. King *Johns Magna Charta*, and K. *Hen.* 3. the ſame.

Mat. Paris relating the manner how, and upon what conſideration King *Hen.* 3. in the 9th of his Reign Granted his *Charters*; tells us, that being Sealed with the Kings Seal, they were ſent into all Counties of *England*, and that *iſtarum tenor chartarum habetur expreſſius*, *Fol* 321. n. 10. 20.

They were alike in all things.

ubi historia agitur de Rege Johanne; Ita quod Chartæ utrorumque Regum in nullo inveniuntur dissimiles. That is, The tenor of those Charters may be found more expresly in the History of King *John*, so as the Charters of both Kings were not found to disagree in any thing: and it is no impropriety of Speech of the *Barons*, to say to King *Henry*, that King *Johns Charter* was his *Charter*, when he had Granted it to them in the 9th of his Reign, and confirmed it with dreadful Curses, according to the mode of those times, in the 37th of his Reign; for the same Historian relating this solemn confirmation of *Magna Charta*, says, *Rex bona fide, & sine aliqua cavillatione promisit se Magnam Chartam & omnes ejus articulos fideliter observaturum. Quam multis retroactis annis, Pater ejus Rex Johannes tenere Juravit*; the King promised faithfully without any Cavil, to observe *Magna Charta* and all its Articles, as his Father King *John* had done many years before.

Paris ut supra. * So it is called in this place, if any stress be to be laid upon that word.

This confirmation was but two years before the *Barons* gave this Reason to King *Henry*, that they would not answer in * Parliament, or give any *Ayd*, because their Peers were absent, not being called according to his *Magna Charta*. This single Instance is sufficient to prove, that the Common-Council of the Kingdom, mentioned in King *Johns Charter*, was the *General Council* of the *Kingdom*; nor need I examine his Book further, if it were not to let his Readers see how he hath cheated

cheated them, and abuſed, and wreſted the Records and Hiſtories he hath cited.

Three years after this Anſwer 42 *Hen.* 3. the *Barons* at *Oxford* require of him, the confirmation of *King Johns* Charter. *Ut Dominus Rex Chartam libertatum Angliæ quam Johannes Rex Pater ejus ſuis Anglis confecit, & confeſſam conceſſit.* *Ibid. f.* 970. n. 50.

Five years after that, in the 47th of *Hen.* 3. when the differences between himſelf and the *Barons* were referred to the King of *France*; he *nulled* the *Proviſions* made at *Oxford*; but ſaid, by that he intended not altogether to abrogate King *Johns Charter*, and therefore the *Earl* of *Leiceſter*, *Sim. Montfort* would not acquieſce in the King of *France* his Judgment, becauſe the Proviſions of *Oxford*, as he ſaid, were founded upon that *Charter*. Here is proof enough, that the *Charters* of *King John* and *Hen.* 3. were the very ſame. *Ibid. f.* 992. n. 10.

The Great *Charter* commonly attributed to *Hen.* 3. and ſtiled his Charter in our Statute-Books, was properly the *Charter* of *Edw.* 1. or perhaps, rather his Explication, or Inlargement of that Charter of King *John* and *Hen.* 3. For we find not the Great Charter, either of that, or King *Johns* Form in any of the The Charter of K. *Edw.* 1.

Rolls, until the 25th of *Edw.* 1. and he had a greater ſum of Money for confirming this Charter than *Hen.* 3. had, as 'tis recorded in the Summons to Parliament for that purpoſe.

Cl. 25 Edw. 1. M. b. Dorſ. de veniendo pro confirmatione Magnæ Chartæ.

Rex Vic. Ebor. Salut. quia in Revelationem omnium incolarum & populi Regni noſtri Pro octava omnium bonorum ſingulorum laicorum per totum idem Regnum, pro urgentiſſima nunc dicti Regni contra Gallicos neceſſitate levanda, conceſſimus pro nobis & hæredibus noſtris, confirmare & firmiter teneri facere Magnam Chartam de libertatibus Angliæ, & Chartam de libertatibus foreſt. &c. Tibi præcipimus firmiter injungentes, quod ſine dilatione aliqua duos de probioribus & Legalioribus Militibus, &c. Eligi, & eos ad Edw. filium noſtrum, &c. venire facias, &c.

In this *Charter* then confirmed, there is no Proviſion made for any Summons to *Great Councils* or *Parliaments*, and the reaſon may well be, becauſe the *Conſtitution* of *Great Councils* or *Parliaments* was lately changed, from what it was in *King Johns* time, and until the 49th of *Hen.* 3. nor perhaps was it ſo fixed, and peremptorily Reſolved on at this time, what it ſhould exactly be for the future, as to have it made an *Article* of the *Charter*, and to this conjecture the frequent variations of Summons to Parliament in thoſe times, do give a probable confirmation.

See the Records at the end of the Anſwer.

Page 244. This Writer cites a Record by parcels, and besides to make it more specious to serve his purpose, he leaves out the beginning and end of it. The whole Record is as followeth. P. 244.

Rex Vic. Bed. & Bucks, Salutem cum Comitis & Barones & cæteri Magnates Regni nostri nobis firmiter promiserunt, Quod erunt London à Die Paschæ proxim. futur. in tres septimanas *cum* Equis & Armis *Parati*, & bene Minuti *ad tendendum* sine Ulla Dilatione *Versus Portsmouth & transfretand. ad nos in Vasconiam Contra Regem Castell. qui terram nostram Vasconiæ in Manu forti in æstate proxima futura hostiliter est ingressurus.*

Rot. Cl. 38 H. 3. m. 7. & 12.

The Preamble of the Writ.

All this is left out by this Writer.

Et tibi præcipimus quod omnes illos de Balliva tua qui Tenent. 20 Librate *terræ* de nobis in Capite, *vel de aliis qui sunt infra ætate & in Custodia nostra ad idem distringas. Tibi Districtè præcipimus Quod* Præter omnes Prædictos, venire facias Coram Concilio nostro *apud Westmonasterium in Quindena Paschæ proxime futur.* Quatuor Legales & Discretos Milites *de Comitatibus prædictis, quod iidem Comitatus ad hoc Eligerint, vice omnium & singulorum Eorundem; viz.* Duos de uno *Comitatu &* duos *de alio* ad *providendum* una *Cum Militibus aliorum Comitatum, quos ad Eundem diem Vocari fecimus,* Quale Auxilium *nobis in tanta* necessitate *impendere voluerunt. Et* tu ipse *Militibus & aliis de Comitatu prædicto* necessitatem nostram *& tam urgens negotium nostrum Diligenter Exponas & ad* competens

King *Henry's* seeming Writ for two Knights explained.

petens Auxilium *Nobis ad præsens impendend. Efficaciter inducat. Ita quod præfati quatuor Milites* Præfato Concilio nostro *ad prædictum terminum Paschæ Respondere possint super prædicto auxilio pro singulis Comitatibus prædictorum.*

This is not transcribed by the Writer.

Firmiter etiam tibi præcipimus, Quod omnia debita quæ nobis à retro sunt, in Balliva tua & solvi debuerint ad scaccarium nostrum ante Pasch. jam instans, habeas ad idem scaccarium in Quindena prædict. Paschæ Scientes, quid nisi prædicta debita tunc ibidem habueris, non Solum Corpus tuum arrestari faciemus, set debita illa de terris & tenementis tuis levari faciemus ad Damnum tuum non modicum. Teste A. Regina & R. Com. Cornub. apud Windesore xi *die Febr.*

What he speaks to any purpose upon this Record, is by asking this Question, If the Tenents in chief made the Common Council of the Kingdom till the 49th of *Henry* III. and had a Power to Tax the rest of the Nation, *de Alto & Basso ad Meram Voluntatem suam*, Why this *Summons* for a *Representative* of the Counties?

I answer, The History of this time, and the occasion of this Writ, will give any reasonable Man satisfaction why they were summoned.

Paris in Addition. fol. 189. n. 50. *Hen.* 3. wanted Money in *Gascoigne.*

King *Henry* being at this time in *Gascony*, and in great *distress* for want of Money, he wrote to his *Queen* and his *Brother Richard Earl* of *Cornwal*, who had the *Government* of the

the Nation in his absence, to assemble the *Archbishops*, *Bishops*, *Earls* and *Barons* of the Kingdom of *England*, and to represent to them his Condition, and the intended Expedition of the *King* of *Castile* into *Gascony* against him; which they did about the latter end of *January* 1254. in the 38th year of his Reign; and did declare to them what he had directed them. The *Barons* would part with no Money, as not believing the *King* of *Castile* would invade *Gascony*, and thinking that Relation but an Artifice to procure a Tax of them. They were drawn into that suspicion by the *Insinuations* of *Simon Montfort*, who not long before had resigned the *Government* of that *Country* to the King, who was indebted to him for it in a great Sum of Money. However, though they did not assist the *King* according to his Expectation, yet the *Earls* and *Barons* promised, that if the *King* of *Castile* did make War upon him, they would be at *London* three weeks after *Easter*, ready to march to *Portsmouth*, and there take Ship, and come powerfully to his Assistance against him. Some of the *Bishops* also promised they would personally come to him with considerable force; and others of them and the Abbots to supply him with Money, against the said *King* of *Castile*, if by force he attempted any thing against him.

Ibid. Hist. f. 887 n. 10.

Ibid. f. 863. lin. 1. Additam. f. 190 lin. 3.

This being the History, let us consider the *Writ*, which consists of three Parts, and the occasion of it.

The Design of the Writ.

The

The first part of it is a Precept to the Sheriff of *Bedf.* and *Buck.* Shires, grounded upon the *Earls* and *Barons* promise to be at *London* three weeks after *Easter*, fit and prepared to march to *Portsmouth*, &c. To summon all that held 20 *l. per Annum* Land of the *King in Capite*, (which was then a Knights Fee) to the same Service, and if need were to Distrein them.

The second part is a Precept to the same Sheriff, to cause to come before the *King's Council* at *Westminster* four Loyal and Discreet Knights, two for each Shire, such as should be chosen by it, to provide with the Knights of other Counties what Aid they should afford the *King* in so great necessity.

☞ This was not a *Summons* to a *General Council*, the King had tryed that before, without success. These *Knights* were neither summoned *ad Colloquium vel Tractatum*, (the usual words for Parliamentaty Councils in those times) but to appear before the King's Council fifteen days after *Easter*, six days before the Barons were to meet, (who had denyed the King an Aid) to inform them what voluntary Aid each particular County would give the King in his great necessity toward the Defence of *Gascoigne*, against the intended Invasion of the King of *Castile*.

Which Necessity and Business the Sheriffs themselves were diligently to declare to the Elected Knights and others of the County, and

and effectually to induce them, to grant the King a preſent competent Aid; ſo as the Knights of each County might anſwer upon their appearance before the King's Council at the day prefixed, what they would do concerning this Aid ſo required of them.

The third part alſo is a Command to the Sheriff to Levy and Pay in all the *King's* Debts, under ſtricteſt Penalties, into his Exchequer by a certain day, a Clauſe not to be found in Parliament Writs.

The *Date* of this Writ is likewiſe to be obſerved, *Febr. xi.* in the 38th of this King, not many days after the breaking up of the General Council of the *Archbiſhops*, *Biſhops*, *Abbots*, *Priors*, *Earls* and *Barons*, that met either *Jan.* 27. or 29th this very year, and denyed the *King's Aid.*

The like Writ, and the ſame Date, *Febr.* xi. at *Windſor*, and the ſame Teſte was directed to the *Archbiſhop* and *Biſhops* in their ſeveral *Dioceſſes*, to ſummon their Chapters, *Archdeacons*, *Clergy*, and the *Religious* Perſons in their reſpective *Dioceſſes* before them, and to excite them to a voluntary and liberal Contribution to ſupply and relieve the King's Neceſſities for the Defence of *Gaſcoigne*, againſt the deſigned invaſion of the *King* of *Caſtile*.

Cl. 38 Hen 3. m 7. Dorſe. The like Writ directed to Biſhops, *&c.* for a voluntary Aid.

And the manner and quantity of their *Aids*, and the Sums they would contribute in this *Neceſſity*, were required to be certified from every

Ibid. in eodem Brevi.

every *Biſhoprick* and *Dioceſs* to the *King's Council* at *Weſtminſter*, by certain diſcreet Men, fifteen days after *Eaſter*, the ſame time the two *Knights* for every *County* were to appear before the ſaid Council: Every *Biſhop* with the *Clergy* and *Religious* in every diſtinct *Dioceſs* being to meet and act herein apart by themſelves, and were not ſummoned to meet all together, to adviſe and reſolve of this *Aid* requeſted of them.

This Reſolves our Writers *Queſtion*, Why *two Knights* were choſen in every County, and cauſed to appear before the *King's Council*.

Pag. 248. *'Tis to be obſerved, and cannot be denied by any Antiquary, That Freeholders, and they that came from the Counties as the Repreſentatives of ſuch, had the Appellation of Magnates.*

It's very true, that in our ancient Parliament-Rolls the *Knights* of Shires are ſometimes called **Grantz** *des Counties*, or great Men of the Counties; and well they might, for without doubt they were moſt commonly the greateſt *Tenents in Capite*, under the degree of great Barons in each County, which were choſen by the *Military Tenents*, to repreſent the *omnes alios qui de Rege tenebant in Capite*, mentioned in King *John's Charter*, or them and all other *Military Tenents* by mean Tenure: for 'tis ſcarce to be believed that thoſe Men, the *Tenents in Capite*, which made ſuch a noiſe for their Liberties, would part with this main point, of being perſonally preſent, or the Body of

of them represented by some of their own number in every County; and it may be upon this account they had the Title of *Notable Knights, &c.* in the antient *Writs* of *Summons* directed to the Sheriffs.

In this 248 Page he cites a Record, *Rot. Pa.* 37 *H.* 3. M. 12. but indeed M. 13. Dors. but mangles it, and only takes out of it what words he thinks will seduce unwary Readers to have some good opinion of his fancy: *Rex Angliæ, R. Comes Norfolc, &c. Cæterique Magnates Angliæ, consented to the Excommunication of all the Violators of the great Charter, &c. The Record goes on, he says, Et Communitas Populi protestantur publice in præsentia Arch. Cant. aliorum & Episcoporum omnium in eodem Colloquio Existentium.* Pag. 248. Pag. 248.

In cujus rei Testimonium, & in posterum veritatis Testimonium tam Dominus Rex quam prædicti Comites ad instantiam Magnatum & Populi præsentium, scripto sigilla sua apposuerunt. Ibidem.

Here (saith our Writer) *the Communitas Populi, were the Communitas Civitatum & Burgorum* (*high Confidence*) *for the rest were Magnates, the King and some Earls subscribed at the desire of the rest.* Ibidem.

See this Record examined, and the meaning of it fully cleared in the Answer, p. 109. 110. 111. 112, *&c.* Ibidem.

Our

Pag. 236. &c. so pag. 241.

Our Writer tells us of Vetus Feoffamentum, and Novum; *and says the old Feoffment was of such Fees, as were granted from the Crown, and that the* Novum Feoffamentum *was of such* Fees *as were granted by the* Tenents in Capite *to others by Sub-Infeodations, or such as the* Tenents in Knights Service *held by mean Tenure. The Fees of the first or old Feoffment were all the* Tenents in Capite *were answerable for when any Tax was charged upon them*; and for the Fees *de* Novo Feoffamento, or which were holden by mean Tenure, *or Sub-Infeodation, they could not be charged without the consent of the mean Tenents themselves, or Subfeudataries.*

Upon this Notion he makes a long discourse, and thinks he hath obtained so much as thereby to prove, that these mean Tenents in Military Services were not Taxed without their own consent, and therefore there were more than the Tenents in Capite in the Common Council of the Kingdom.

To destroy this Notion, I shall shew, first, the meaning of the words Vetus and Novum Feoffamentum, and then the matter of fact in this case.

First Instit. f. 9. a.

Sir *Edward Coke* says, Feoffment is derived from a *French* word of *Art* Feodum, *quia est Donatio Feodi*, for the antient Writers of the Law called a Feoffment *Donatio*, or the word *do* or *dedi*, which is the aptest word

of *Feoffment*. I shall not examine whether *Feodum* was a French word of Art, but take Sir *Edw. Coke's* meaning that *Feoffment* was the Gift of a Fee; the word is properly derived from the French word *Fiefment*, which signifies infeoffing, or giving of a Fee, and that from the word *Fief*, a Fee.

In the Writings of the *Feudists* we find *Vetus Feudum* & *Novum*. *Vetus Feudum est, Quod a superiore, hoc est à Prædecessore præsentis Domini Constitutum est, vel Prædecessori Vassalli Concessum. Semper enim antiquum Feudum, de Successore Dicitur Novum autem Quod & ab eo Domino, & ei Vassallo de quibus agitur Constitutum est*; i. e. Hottom. de Feud. Disput. c. 6. Col. 819. B. *Vetus & Novum Feoffamenti.* what they were.

An old Fee is that which was given by the *Predecessor* of the present *Lord*, or which was granted to the *Predecessor* of the *Vassal*. For always an old *Fee* is called so, in respect it hath descended, or gone in Succession: But a new *Fee* is that which is given by the present Lord to the present Vassal, of whom we are speaking.

In another place, *Novum Feudum appellatur, quod ei de quo agitur attributum est; Vetus vero quod ejus Parentibus vel Majoribus*. That is called a *New Fee* which was given to the present *Feudatary*; and that is called an *Old One*, which was given to his *Parents* or *Ancestors*. Ibid. in Lib 2. Feud. Tit. 3. Sect.

And hence it was, that according to the King's Writs issued to that purpose, the *Te-*

ments in Capite did certifie into the Exchequer by Charts under Seal, how many *Knights Fees* they had *de Veteri & Novo Feoffamento*, that the Court might know whether they had more or fewer Knights Fees than their Predeceſſors, and ſo to charge them accordingly, and that they might perform their Homage and Ligeance to the King.

According to this underſtanding of *Novum & Vetus Feodum* by the *Feodiſts*, though not in the ſtricteſt ſenſe, we have many Inſtances in every County of *England* of Knights or Soldiers of the *Old* and *New Feoffment* in the time of *Hen.* II. in their *Charts* or *Certificat* under Seal, how many *Knights Fees*, or how many *infeoffed Knights* they had, of *Old* or *New Feoffments*, and how many they ſtood charged for upon their *Demains*, or Lands which they held in their own hands, and upon which they had no *Knights* by *Feoffment*. I will give one Inſtance that *Vetus* and *Novum Feoffamentum* were only to be underſtood in reſpect to former or later time, and not in reſpect to *Feodaries* or *Perſons*, or the *Feoffments* themſelves.

SALOPSCR'.

Carta Rob. de Brimton.

CHarissimo Dom. suo Legio H. Reg. Angl. &c. suus homo Legius Rob. de Brimton Salutem. Et fidele Servitium, michi & allis Comparibus meis per literas vestras innotuistis, ut per fidem & Ligantiam quam vobis debemus, vobis per Breve nostrum pendens extra Sigillum, Mandaremus quot Milites haberemus de **Veteri Feoamento** de tempore Hen. Regis avi vestri, & quot Milites habeamus de **Novo Feodamento** post tempus Regis Hen. avi vestri; & quot Milites habeamus super **Dominium** nostrum. Inde est quod vobis ut Domino meo Charissimo, Mando, Quod de veteri Feodamento nullum Militem habeo præter Feodum unius, quem michi una quadam liberali Muliere nomine **Eva** quæ modo est heres per Servitium unius Militis dedistis, faciendo Servitium ad Custum vestrum; de **Novo vero Feodamento** nullum habeo Militem vel super **Dominium** Meum, & vobis quidem & filio vestro Hominium feci & Ligantiam.

Red Book in the Exchequer, Tit. as here noted.

The same Certificate of the same Person is to be found in the same Book, Tit. **Statfordscr'.** of one *Knights Fee* there. There are several of this Tenor, or the like nature Printed at the end of the Animadversions.

Pag. 239, 240. And this Description of *Vetus* & *Novum Feoffamentum*, is fully confirmed by the Record he hath produced to settle his Notion: but according to his constant practice, he recites only as much of this Record as in his own Judgment he thinks fits his purpose, and conceals the rest.

Clauſ 19. H. 3. M. 6. Dorſ. *Rex Vicecomiti Somerſet Salutem, Scias Quod Comites & Barones, & omnes alii de toto Regno noſtro Angl. Spontanea voluntate ſua & ſine Conſuet. Conceſſerunt nobis* Efficax Auxilium *ad magna negotia noſtra Expediend. Unde proviſum eſt de Conſilio illorum quod habeamus de ſingulis Feodis Militum* quæ de nobis tenent in Capite *& de* Wardis *iam de* Novo Feoffamento *quam de* veteri duas Marcas.

Thus much and no more of this Record is quoted by this Writer; the other part follows.

Ad Auxilium prædictum nobis faciendum, unde proviserunt reddere nobis unam Mediet atem ad Feſtum Sancti Michaelis anno decimo nono, & aliam Mediet atem ad Paſche anno, &c. 20. Providerunt etiam, Quod prædictum Scutagium *Colligatur per Manus Ballivorum ſuorum in ſingulis Comitatibus, & tradatur per Manus eorundem, Duobus Militibus, Quos ad hoc aſſignavimus in ſingulis Comitatibus deferend. ad ſcaccarium noſtrum Lond. & liberand. ibidem Theſ. & Camerariis noſtris, & ideo Tibi præcipimus Quod ad Mandatum omnium* Comitum & Baronum

num & *omnium* aliorum, Qui de nobis Tenent in Capite *in Balliva prædicta modo prædicto sine Dilatione* Distringas omnes Milites & Libere Tenentes qui de eis Tenent per servitium Militare *in Balliva tua ad reddendum Ballivis* suis de Singulis Feodis & Wardis Duas Marcas ad prædictum Auxilium *nobis Faciendum in Terminis prædictis, & liberandum Johanni de Aure, è Hen. de Meriet quos ad hoc assignavimus in Comitatu tuo sicut prædictum est*, &c. *Teste meipso apud Westm.* xvii *Julii, anno, &c.* xix.

Who were charged in this Writ two Marks for every Knights Fee that was holden *in Capite*, as well of the New Feoffment as of the Old, but the *Tenents in Capite*? To whom is the Novum Feoffamentum in this Writ affixed but the *Tenents in Capite?*

Who gathered this *Tax* but the *Earls*, *Barons*, and *Tenents in Capite* by their Bayliffs?

Who were to be Distreined by virtue of this Writ to pay two Marks for every Fee at the command of the *Earls*, *Barons*, and *Tenents in Capite*, but their Sub-Feudataries, and Under-Tenents, the *Milites & Libere Tenentes de eis per Servitium Militare*, *Knights* and *Free-Holders*, which held of them by Military Service?

Who were the *Omnes alii de Regno* besides the *Earls* and *Barons* that granted this Tax, but the *Ommes alii qui de nobis Tenent in Ca-*

pite, (mentioned in that part of the Writ he hath concealed) at whose Command the Sheriff was by the King's Precept to Distrein their Under-Tenents?

This is evident beyond contradiction by another Writ to the Sheriff of *Sussex* about the very same Tax.

Cl. 19 Hen. 3. M. 8. Dors.

Rex Vicecom. Sussex Salutem, Scias, Quod Archiepiscopi, Episcopi, Abbates, Priores, Comites, Barones, & omnes alii de Regno nostro Angl. qui de nobis Tenent in Capite *Spontanea voluntate sua & sine Consuetudine, Concesserunt nobis Efficax Auxilium ad Magna negotia nostra Expedienda. Unde provisum est de* Consilio illorum, *Quod habeamus de singulis* Feodis Militum & Wardis, quæ de nobis Tenent in Capite *duas Marcas, ad prædictum Auxilium nobis faciendum, & unde providerint reddere nobis unam medietatem ante Festum Sancti Michaelis,* Anno Regni 19. *& aliam Medietatem ad Pasche Anno Regni nostri 20. Ideo tibi præcipimus quod ad* (a) *Mandatum venerabilis Patris R. Cicestr. Episcopi Cancellarii nostri sine Dilatione Distringas omnes* Milites & Libere Tenentes, Qui de eo Tenent per Servitium Militare *in Balliva tua ad reddendum ei de singulis* Feodis & Wardis Duas Marcas ad prædictum *Auxilium nobis per manum suam reddendum in Terminis Prædictis.*

(a) He was to give this command as a Baron, not as Chancellor, as is evident by the foregoing Writ.

Sic scribitur pro aliis Episcopis, Abbatibus, Prioribus & Magnatibus.

Who

Who but this Writer and another Gentleman that lent him the Notion, will pretend to prove from these Records, That *Nonum Fecessamentum* was nothing else but a *Sub-Infeudation* of Under or Mean *Tenents* in *Military Service* by the *Tenents in Capite*? or that these *Sub-Feudataries*, or *Tenents*, ever sate and voted in the *Common Council* of the *Kingdom*, and consented to these other *Taxes*? If I understand any thing, I think they prove the contrary.

Thus much of *Scutage*, as it was an *Aid* or *Tax* imposed by common consent of the Kingdom. There was another *Scutage* which we may call *Scutage-Service*; that is, *Scutage* which was paid by *Tenents in Capite*, when they went not out in any Expedition according to Summons, or staid at home by leave obtained of the King, in this case they paid Scutage according to the Duration of the Expedition, or as they could agree with the King. This was due to him by Custom, without *Consent* of the *Common Council* of the Kingdom, especially if he himself went in the Expedition. Scutage-Service.

And besides this, there was *Scutage-Service* due to the *Tenents in Capite*, from their *Sub-feudataries*, or Under-Tenents if they were not with them, when they served the King in Person; and this was levied only upon the King's Grant, and by his Writ, without any consent whatever: for this see the Answer, p. 195. and it is further confirmed by the following Records.

Cl. 7 Hen. 3. M. 4. Dors. Anno Domini 1223.

Rex Vic. Northampt. Salutem, Scias, Quod Concessimus Dilecto & Fideli avunculo nostro W. Com. Surr. quod habeat Scutagium *suum de* Militibus *suis qui de eo Tenent in Balliva tua pro exercitu nostro Walliæ in quo nunc est per præceptum nostrum Scilicet de* Scuto *duas Marcas*, & ideo tibi præcipimus quod prædictum Scutagium ei habere facias *ut prædictum est T. R. &c. apud Winton, 19 die Aug.*

Eodem modo scribitur Vic. Middles. Lincol. Oxon, Wilts, Dors. Somers.

Ibidem.

Eodem modo scribitur pro Hamone Peche Vic. Cantabr. Norff. Suff. Lincol. Essex, Salop, Berks.

Ibidem.

Eodem modo scribitur pro N. de Bello Campo de Scutag. habend. Vic. Middles. Rotel. Hertford, Surr. Bedf. Bucks, Hunting. Berks; and for above thirty more Earls, Barons, and *Tenents in Capite*, in that Membrane and Roll.

There is in *Mat. Paris* a Relation of the Siege of *Bedford*-Castle, in the next year, the eighth of this King, 1224. that clears the meaning of these Records beyond all doubt.

The *alii multi* here were the Abbats, Priors, and *alii qui de nobis* Tenent in Capite, *&c.* Paris, f. 320. n. 20.

In Octavis Sanctæ Trinitatis Rex cum Archiepiscopis, Episcopis, Comit. Baronibus, & (a) aliis Multis Convenerunt ad Colloquium *apud Northampt. de* Regni Negotiis *Tractaturi.*

Sitting

Sitting this Parliament or *Colloquium*, news was brought the King, that the Garrison in *Bedford Castle*, had issued out as far as *Dunstable*, and taken *Hen. de Braybroke*, one of his *Itinerant Justices*, which was there hearing Causes, and carried him prisoner into the Castle. *Quæsivit Rex Consilium à clero simul & populo.* The King asked Advice of the *Clergy* and *Laity* what he should do, They all with one consent advised him immediately to lay aside all business, and march towards the Castle, with sufficient force, and they all accompanied him, being come thither, the King demands the Castle, and his *Justiciarie Hen. de Braybroke*, the Governor and Soldiers deny the King entrance into it, nor would they deliver the *Justiciarie*; After some time the King forced the Castle, by the assistance of the *Earls*, *Barons* and *Tenents in Capite*, which were at this *Colloquium*; and then,

Ibid. n. 40.

* See *Laici* below.

Ibid. 321. 30.

Regi pro maximis laboribus suis & Expensis, tam à Prelatis quam à laicis concessum est per totam Angliam Carucagium, *de qualibet* Caruca *duo solidi Argenti, Magnatibus item Rex concessit,* Scutagium, viz. *de quolibet* Scuto *duas Marcas sterlingorum & sic omnes ad propria recesserunt.*

Ibid. 322. lin. 3.

Populus & Laici the same.

Ibid. lin. 5.

The *Prelates* or *Clergy* and *Laity* granted to the King for his great Labour and Expences *Carucage* through all *England* of every *Plough-land* two Shillings of Silver.

And

* To be paid by their Tenents in Military Service.

And the King also Granted to the * Great Men Scutage, viz. of every Knights Fee two Marks sterling, and so they all departed home; this fully explains the last Records.

P. 242. Rot. Cl. 16. H. 3. m. 2. Dors.

A Fourtieth of their Moveables is Granted by the Archiepiscopi, Episc. Abbates priores, & clerici terras habentes quæ ad Ecclesias sum non pertinent, Comites, Barones, Liberi Homines, & Villani de Regno nostro.

Ibid. P. 242.

* The word used in the Record, is Auxilium.

*So that 'tis plain here who made the Common Council of the Kingdom, and gave the * Subsidies. The Archbishops, Bishops, Abbats, Priors, inferior Landed Clergy-men, the Counts, Barons, Knights, Freemen, it being a Grant of Goods not laid upon Land; and that it may fully express the parties to the Grant the Record tells us there were the* Villani, *the Inhabitants of every* Villa.

The *clerici terras habentes quæ ad Ecclesias sum non pertinent.* He calls inferior Landed Clergy-men: 'tis more than he can make out, for Grant they were Parish Priests (which he cannot prove) they many of them had temporal Estates, and Goods upon them, for which they were Taxed by the Clergy themselves, for though they are mixed in this and other Writs to the Sheriffs; yet most commonly, if not always, the Clergy Taxed themselves, as the usage hath continued long since these times we write of.

But *Mat. Paris* tells us they were *Episcopi & aliarum Ecclesiarum Prelati*; Dignified Clergymen that gave this Tax, his words are concerning this very Council. *Apud Lambeiam Exultatione Scotia Crucis, ad Colloquium coram Rege convenerunt Epi. & aliarum Ecclesiarum Prelati cum Proceribus Regni, concessa est Regi Quadragessima pars Mobilium.* fol. 377. n. 50.

What the *Liberi Homines*, or Freemen were in this Record, we may easily guess from the other two Records of 19 *Hen.* 3. *viz.* Such of those *Omnes alii de Regno qui de nobis Tenent in Capite*, which were not *Milites*, in a strict sense, nor had receiv'd the Order of Knighthood; and the probability of this will seem greater when we come to the Record next cited by him about this very Matter. See *Liberi Homines* in the Glossary.

The only Question will be about the Villani, and if they will not pass for the *Inhabitants* of such Villa's as held of the King *in Capite*, such as might be the Burgesses of *St. Albans*, and other *Burgi Dominici Regis*, which are called *Villa*'s in the Records. Then we must apply our selves to his next Record, which he cites, concerning a *Taxe* of the *thirtieth part* laid upon *Goods* and *Moveables* about five years after.

Rex Vic. Kanc. Salutem, scias quod cum in octavis Sancti Hillarii anno, &c. xxi. ad mandatum nostrum convenirent apud Westm. Archiepi. Epi. Abbates, Priores, Com. & Barones P. 243. Cl. 21. *H.* 3. m. 7. Dors.

nes *totius Regni nostri & Tractatum habentes nobiscum de statu nostro & Regni nostri idem Archiepiscopi. Epi. Abbates, Priores & Clerici* **Terras habentes** *quæ ad Ecclesias suas non pertinent, Comites, Barones,* **Milites & Liberi Homines** *pro se & suis* **Villanis** *nobis concesserunt in auxilium* **tricesimam partem** *omnium Mobilium suorum*, &c.

Tenents in capite granted for their Villanes.

From this Record we may observe, First That the Kings *Writ* only issued to the *Arch-Bishops, Bishops, Abbats, Priors, Earls* and *Barons* of the whole Kingdom.

Secondly, That in the Granting of this Tax the *Sheriff* is told in the first place, that the *Archbishops, Bishops, Abbats, Priors*, and the *Clerics* which had Lands that belonged not to their Churches, (a certain sign they Granted by themselves, and of nothing else) and then That the *Earls, Barons, Knights*, and *Freemen*, for themselves and **Villanes**, a thirtieth part of all their Moveables.

From this Record 'tis manifest, the *Liberi Homines* had **Villanes**, if not **Bondmen**, *Villagers* or *Rusticks* at least; of whose Estates by *publick Assent*, and for *publick Benefit* they might in part dispose of, which *Liberi Homines*, according to the Tenor of all *Records* and *Historie* were *Tenents in Capite*; and that the **Villanes** mentioned in the other *Record*, 16. *Hen.* 3. to have given a fortieth part of their Moveables, did Grant it by their *Lord*, that is, their *Lords paramount*, that were *Te-*

nents

nents in Capite, did Grant it for them, although they held it not immediately of them, but of other *Tenents* in *Military Service*, which immediately held of the *Tenents in Capite*, who did charge them by publick *Taxes*, as hath been shewn from Records, and consequently all under them.

It was frequent in these times, to signifie to the *Sheriffs*, and to declare in the same Grants, that such and such had *Granted* a Tax (*Concesserunt*) That is by those then that had Power and Authority to do it for them, and without their consent too, when they themselves for whom they Granted, were not capable by our Writers own Confession and manifest Reason, of being *Members* of the *Common-Council* of the Kingdom, as *Tradesmen*, *Servants*, *Bondmen*, or *Villanes*, *Women*, *Monyed-Men* that had no Freehold Estates.

'Tis said in *Pat.* 15 *Hen.* 3. m. 3. That the *Abbats*, *Abbesses*, *Priors* and *Prioresses*, which held of the King in *Capite*, **Concesserunt**, the word used in the Records, cited for the *Grant* of *Villanes*, and yet I believe the Writer will not say, that *Women* since the Conquest at least, were Members of the *Common-Councils* of the Kingdom.

Venerabilis Pater G. Eborac. Archiep. Anglie Primas & alii Prelati, Magnates, Libere Tenentes, & omnes alii de Regno nostro servitium fecerunt, & subsidium ultra quam temporibus retroactis in aliis submonitionibus exercitus nostri facere consueverunt. Rot. Pat. 48. H. 3. m. 2. n. 5.

It

It seems by this Record, that all Men of the Nation were bound to the *Service* and *Subsidie* therein mentioned; but I believe no Man of Sense will understand it so.

It is said in the Confirmation of Magna Charta, 28 of *Edw.* 1. That *Omnes de Regno nostro dederunt nobis, Quintodecimam partem omnium Mobilium suorum.* All Men of the Kingdom gave a Fifteenth of all their Moveables: Can any man believe, that all the Men of *England* were there in the *Colloquium*, when *Hen.* 3. regranted K. *Johns* Charter? or that all Men of the Kingdom met to choose their Representatives? All the men of *England* are not personally present in this great Assembly at this day, nor doe the tenth part of them meet to choose their Representatives.

Pat. 7. E. 2. p. 1. m. 3. cedul.

Rex Militibus Liberis Hominibus & *toti Civitati Com. Mid. tam infra libertates quam extra salutem. Cum* Comites, Barones, Milites, Liberi Homines, *ac* Civitates *Comitatum Regni nostri vicessimam omnium bonorum suorum mobiliun.* Civesque & Burgenses *ac* Communitates *omnium Civitatum & Burgorum ejusdem Regni quintam decimam bonorum suorum mobilium nobis curialiter* concesserint & *gratanter*, &c. T. R. *apud Westm. vicessimo octavo die Novembr.*

The

The like Writ in the same words was directed *Civibus, probis Hominibus, & Tari Communitati Civitatis London.* T. R. *apud Dover*, XV *Die Decembris.*

This was a Parliament, as at this day, consisting of the Lords Spiritual and Temporal, and Commons; That is, of Knights of Shires, Citizens, and Burgesses, and no others; and yet here 'tis said, That the *Liberi Homines*, the *Tenents in Capite*, and the Community or Body of all the Counties of the Kingdom, and the Citizens and Burgesses, and Communities of the Cities and Burghs gave a fifteenth of all their Moveables; will any man think or believe, that the Body of every County, besides the Knights of Shires, and the Community, or Body of every City and Burgh in *England*, besides the Citizens and Burgesses that served for them in this Parliament, were present there, and granted for themselves? where should this incredible vast number of people meet? who should be their Speaker, and collect their Votes? the word in the Record is **Concesserunt**, which answers to them all, and yet no body can suppose them all present, though 'tis said in the Record, they all granted this Tax.

There can then be no other sense put upon the words, **Villani concesserunt**, than that they granted by their *Lords*, the *Tenents in capite*, if it will not be admitted that they were the **Villani** or Inhabitants of those

Villa's

Villa's or *Burghs* that held of the King in *Capite*.

P. 243. *In Page* 243. *our Writer cites part of a French Record out of the Pat. Roll.* 24 Hen. 3. *when there is no Patent Roll that year, and gloſſeth upon it as followeth.*

P. 243. *This agrees with what was done afterwards, in the* 42 *of this King, and it ſeems by this, that even in the* 24 *par le* Commune *de noſtre Royaume; By the whole Realm, or great Council, the King had a ſpecial Council aſſigned, which was to have an extraordinary Power.*

P. 244. He is very free to take notice of what was done in the 42 of *Hen.* 3. and to that end cites two Records, 42 *Hen.* 3. m. 3, and 4. the laſt is a *French Record*, of which there hath been occaſion to ſpeak before in theſe animadverſions, and the tendency and deſign of the other may be ſeen in the Anſwer, p. 199. *&c.* they both *relate to the Oxford Proviſions* there ſpecified.

P. 248. 249. Britan. *Page* 248. *and* 249. *our Writer cites a paſſage in* Camden, fol. 122, *and thus comments upon it.*

P. 249. *The ſubſtance of this is, That the word* Braro *was applicable to the whole people, the Body of Freeholders eſpecially, as Aſſembled in Parliament, till the King conferred particular Honor upon ſome, by his Eſpecial Writs of Summons, and none other came, but in the purſuance of the* illa illa Brevia, *that is the Writs for Election in Counties, Cities and Boroughs, this was begun*

in

to prevent those Tumults, of which both the King and the Barons had fatal Experience.

I refer the Reader to the Answer, where this passage of *Camden* is recited and explained, Pag. 226, 227, &c. But do desire him to take notice that our Writer hath left out the word Eis between the words *Brevia* and *Dirigere*, which guides the whole sense toward the latter end of this passage. He hath strangely abused the meaning of *Camden* in putting this sense upon his words.

The Probi homines, or Bonæ Conversationis, P. 264. *came sometimes in their own Persons; and when they agreed to it, which was no Abridgement of their Personal Right, they came by Representation* Ex Electione, *and every one was there himself virtually, by his Deputy, but they often met in vast Bodies, and in Capacious Places, both in the Saxons Times, and after* William *the First obtained the Imperial Crown.*

This is precariously said without any Foundation or Authority; yet he seems to back it with an Instance.

The whole Body of Proprietors, he says, *were* Ibid. P. 264. *assembled at* Runemede *between* Staines *and* Windsor, *at the passing of King* John's *Charter.*

What this Assembly was, and of whom it consisted, see the Answer, Pag. 106, 107.

P. 265. Fadmer Hiſt. Nov. fol. 70. *Anſelm in one of his Diſputes with* Hen. I. *deſires the Debate may be adjourned till the* Eaſter *following. He comes to the Court at* Eaſter, *Igitur in Paſcha Curiam venit, regni ingenuitatem præſens Conſulit. Communis Concilii vocem accepit, &c.*

Ibid. P. 265. *Here the Council Epiſcoporum & Primatum, to which he referred himſelf, was reciprocal with the Ingenuitas Regni: that is, as Sir* Henry Spelman *ſhews us, the Liberi & Legales Homines, The good honeſt Freeholders, ſome of which were no better than* Plebeians.

Sir *Henry Spelman* is not very Elaborate in Expounding the word *Ingenuus*, and ſays that ſome Moderns have uſed to expreſs our *Yeomen* and *Plebeians* by it; but whether properly, or like *Latiniſts*, he did not know.

The word amongſt the *Romans* ſignified the ſame as *free-born* amongſt us. *Hottoman* ſays that *Ingenui* were the ſame that *Patritii*, who were no *common ordinary* Men. And *Calvin*, Lexic. Jurid. *Ingenuus eſt cui ex Nativitate Competit Libertas, qui non eſt factus Liber, ſed Natus. Erat igitur Ingenuus quem nos hodie gentilem vocamus, Gentiles ſunt qui inter ſe eodem nomine ſunt, Quorum Majorum nemo ſervitutem ſervivit, qui Capite non ſunt Diminuti, ut* Bruti, *ut* Scipiones. And ſo proceeds from the Authority of *Cicero*, *Pliny*, *Budæus*, *Boetius*, *Livy*, and others, to make them Nobiles.

And

And in this ſenſe or the like, his Author *Eadmer* more than once uſeth this word. King *Hen.* I. wrote to *Anſelm* to reſpit the Conſecration of *Thomas* Archbiſhop Elect of *York* for ſome time; and ſaid, he himſelf when he came into *England*, would compoſe all Differences between them relating to the Conſecration. *Anſelm* ſends the Dean of *Chicheſter*, and a Monk of the Abby of *Bec.* into *Normandy* to the King, to acquaint him with the ſtate of the preſent Difference between them, and to beſeech him, *Quatenus ſuæ Auctoritatis* **Ingenuitate**, *& proviſione ſatageret, ne Integritas Chriſtianitatis in duo Diviſa ſcinderetur in Anglia.* Eadmer, f. 101, lin. 49.

Certainly *Auctoritatis Ingenuitas* doth not here ſignifie a *Plebeian* or *ordinary Authority*, but a *Royal*, *Noble*, *and great Authority*, by which he was to interpoſe, and over-rule the Differences between both theſe great Prelates.

In another place ſpeaking of *William* Son to King *Hen.* I. he hath theſe words, *Willielmum, Quem ex* **Ingenua** *Conjuge ſuâ filium ſuſceperat, hæredem Regni Subſtituere ſibi volebat.* Ibid. f. 117, lin. 39.

It cannot be ſaid that *Maud*, Queen to *Hen.* I. the Daughter of *Malcolm* the Third late King, and Siſter to *Edgar* the then preſent King of *Scotland*, was a *Plebeian*, or an *ordinary* Woman; the leaſt then that **Inge-**

nus as an *Epithet* joined with *Conjuge*, can signifie in this place *Must be*, *Noble*, or *Great*; and that King *Hen.* had his Son *William* by his *Noble*, *Great*, or *Illustrious* Wife, *&c.*

Upon *Consideration* of the antient import of the word **Ingenuus** among the best *Roman Authors*, and the signification and sense that our Writer's own Author *Eadmer* used both that, and *Ingenuitas* in, no Man can think but that by **Ingenuitas** *Regni*, he meant, *Nobiles*, or *Magnates Regni*, or at least the *Liberi Homines Regni*, which when-ever mentioned in *respect to Great Councils*, and their being there, are all the same Persons.

See *Liberi Homines* in the *Glossary*.

Pag. 265.

And therefore because Sir *Hen. Spelman* in his Exposition of the word **Ingenuus**, seems not to *favour* his *Notion* of it; and in his discourse upon the word **Parliament**, doth disallow his *Whimsies* and Apprehensions concerning the *antient Constitution* of it, he *says*, that he or they who put out the Second Part of Sir *Hen. Spelman*'s *Glossary*, *did not do right to his Memory, in representing him affirming, That the* **Plebs**, *the* **Ingenuitas**, *or* **Liberi & Legales Homines**, *as he himself tells us the word* **Ingenuus**, *has anciently been used, are no where amongst the several Councils which he had read of, mentioned to have been there, from the entrance of* William *the First*, *to the end of Henry the Third.*

P. 265.

Sir *Hen. Spelman* doth not say so, he only says the *Moderns* did now so use the word, but whether *rightly* or not, he could not tell. Vid. *Verbum Ingenuus*, in his *Glossar.*

Indeed notice being taken of those Councils where were **Optimates** and **Barones totius**

P. 266.

tius Angliæ, *and of that famous Assembly at Salisbury-Plain of the Barons and* Vicecomites, *cum* suis Militibus, *in pursuance of the Summons of William the First. The Positiveness of the Assertion, (that is, of Sir* Hen. Spelman's *Assertion) That the Plebs were not in the antient Councils until the end of Hen. the Third's Reign, is* restrained *with a* Ni in his Dilituerit.

This *Ni in his Dilituerit* is *Ironically* spoken; for he says just before, *Ludunt qui Parliamenta nostra in his Quærunt*, just when he had mentioned this Assembly at *Salisbury-Plain*, and some others such like before it.

He lays the stress upon some words of *Simon* of *Durhams* Relation of this Convention, who Transcribed the very words out of *Florence* of *Worcester*, which are truly recited by this Writer, Pag. 51. and are these.

Nec multo post Mandavit ut Archiepiscopi, Episcopi, Abbat. Comites & Barones, Vicecomites, cum suis Militibus, *die Kalend. August. sibi occurrerent Sarisberiæ,* Qua cum venissent Milites illorum *sibi Fidelitatem contra omnes homines jurare Coegit.* *William* I. Anno Dom. 1086.

Here I take it (says he) *Milites illorum, refers to the Knights of the Sheriffs, that is, the Freeholders. And in Pag.* 50. *he tells us, The King gave Arms in his Court to the great Men, and immediate Tenents. The common Freeholders received them in the County-Court.* P. 52.

To let this idle Invention pass of the common Freeholders being *Knighted* in the *County-Court*, which never entered into any Mans head but his own, if he had understood the construction of the words, he could never have said that **Milites illorum** had referred to the **Milites** of the *Vicounts* or *Sheriffs* only. The sentence runs thus, **Quo cum venissent**, *Milites illorum*; who came to *Salisbury*? The *Sheriffs* only? If the Archbishops, Bishops, Abbats, Earls and Barons, came thither, as there can be no doubt but they did, then *Milites illorum* refers as well to them, as to the *Sheriffs*, for they were the *Military Tenents* of them that came to *Salisbury*, which the *Conqueror* compelled to swear Fealty to him against all Men. Nor were these Vicecomites such ordinary Men as for some hundred of years last past have been Sheriffs, but they were Great Men, *Pares Comitum*, not Officers under them, but such as Governed the Counties for the King, **Vicecomitum**, where an *Earl* had not the *Government* of it, and were *Tenents in Capite*, and perhaps *Proprietors* of as many *Knights Fees* as some of the *Earls*.

Such another Assembly as this there was in the same place, when King *Hen.* I. made all the *Military Tenents* of *England* and *Normandy* do *Homage*, and swear *Fealty* to his Son *William* at twelve years of age,

Fillum

Filium habuit Rex Hen. ex Matilda nomine Willielm. dulci ſpe, & ingenti Cura in Succeſſionem Educatum & provectum, quam & ei vix dum 12 annorum eſſet **omnes liberi homines** *Angliæ & Normanniæ* **cujuſcunque ordinis, & Dignitatis,** & cujuſcunque **Domini Fideles,** *Manibus & Sacramento ſe dedere coacti ſunt.* All the Free-men of *England*, that is, all the *Tenents in Knights Service*, of what *Order* or *Dignity* ſoever, or of what *Lord* ſoever they held, were compelled to do *Homage* and *ſwear Fealty* to him. Malmsbur. fol. 93. a. n. 30.

Eadmer relating this very action, tells who were the great *Liberi homines:* xii Kal. Aprilis, *Factus eſt Conventus* **Epiſcoporum, Abbatum, & Principum** *totius Regni apud Serberiam Cogente eos illuc Sanctiorum Regis* Hen. I. &c. and then *agnitâ Regis voluntate omnes principes facti ſunt homines* Willielmi *Fide & Sacramento Confirmati*; and ſo *Florence* of *Worceſter*. Fol. 117. n. 30. 16 H. I. 1116.

Here are the Men and the Work of this *Aſſembly*, and by neither it can be made out, that theſe were the *Common Freeholders* as at this day, or the *Sheriffs Knights* as he calls them, or that this was a *Common Council* of the Kingdom: for though the ſame Perſons that conſtituted that, were here, and *Thouſands* more, yet the Buſineſs was no *Common-Council* Buſineſs, and the cauſe of the meeting according to the Summons was only to take the Oath of *Allegiance*, and ſwear *Fealty*.

Having given an Account of the *Assembly* at **Salisbury**, and the meaning of the words *Vicecomites cum suis Militibus*, we shall take notice of what our *Writer* says concerning Sir *Hen. Spelman* and his *Glossary*;

Pag. 219. *Who if he had lived* (he says) *to have finished the Second Part, would certainly have given a Compleat Body of Antiquity.* And Pag. 265. he tells us again, *That he was convinced from Sir* Hen. Spelman's *Interpretation of the word* Ingenuus, *(of which enough is said before) That he or they who put out the Second Part of Sir* Hen. Spelman's *Glossary, did not do right to his Memory.* But the true Reason of such his thoughts (as is before hinted) was, because he did not accord with him in his Opinion of the Members of the Great or *General Councils* of the Kingdom.

And indeed as he deals with Sir *Hen. Spelman*'s *Glossary*, in saying the Second Part was not his own, so he doth shuffle off all Records and Histories which are directly against him, by saying the *Curia*, or Great *Councils* there mentioned, were but an *ordinary Curia* or *Council*, and such as in his own Judgment contein any thing that makes for him, the *Councils* there spoken of are *Great* and *General Councils* to be sure.

An account of the Second Part of Sir *Hen. Spelman's Glossary.*

But to return to the *Glossary*, the First Part whereof to the Letter **N.** was published in the year **1626**, the whole being then finished, and

and offered by Sir *Hen. Spelman* to Mr, *Bill* the King's Printer, for the value of Five Pounds in Books only: But he refuſing to give him that ſmall Rate for the Copy, he ventured to Print the Firſt Part of it at his own charge, and moſt of the Books lay upon his hands until the latter end of the Year 1637. when Mr. *Stephens* and Mr. *Meredith*, (Bookſellers in St. *Paul*'s Church-yard) took them off. The next year, *viz.* 1638. Sir *William Dugdale* being with Sir *Hen. Spelman*, and telling him, that many Learned Men were very deſirous to ſee the remaining Part of that Work, Sir *Hen.* then told him what is here related, and produced both Parts of the *Gloſſary*, the firſt whereof was Printed, and inter-leaved with *Blank Leaves*, as alſo was the ſecond, which was *Manuſcript*, wherein he had added and altered much.

After His *Majeſties Reſtauration*, the Earl of *Clarendon* then Lord Chancellor, and Doctor *Sheldon* then Biſhop of *London*, inquired of Sir *William Dugdale* what was become of the remaining part of the *Gloſſary*, or whether ever it was finiſhed? He told them it was finiſhed, and in the hands of Mr. *Charles Spelman*, Grandchild to Sir *Henry*, and youngeſt Son to Sir *John*. Whereupon they deſired Sir *William* to move him to Print it; which he did: but finding that the Bookſellers would give *nothing* for the *Copy*, and that he was not able to Print it at his own charge, and returning this anſwer to the Lord Chancellor and Biſhop of *London*, they Contributed liberally themſelves,

ſelves, and procuring many Subſcriptions to that purpoſe, deſired Sir *William Dugdale* to receive the Money, and deal with a Printer to perform the Work: which he did, and cauſed it to be Printed as he received it, all under the proper hand-writing of Sir *Hen. Spelman*, without Alteration or Addition. And had it not been for the Dreadful Fire in *London*, wherein both the *Copy* and the greateſt part of the Impreſſion were conſumed, it might at this day have been produced to have confirmed what is here reported. For the truth whereof Sir *William Dugdale*, a Perſon of *great Learning*, *Worth*, and *Integrity*, and now a *Living Teſtimony* without exception, may be conſulted, if any *Man* doubts what is here delivered.

By this *Narrative* it is evident that the Second Part of the *Gloſſary* was the true, genuine, and proper Work of Sir *Hen. Spelman*; and therefore I ſhall here Publiſh his Diſcourſe upon the word *Parliament*, as ſtating and giving much light to the determining of this Controverſie.

PArlamentum, al. Parliamentum, & Parlementum.] A. Gall. Parler, i. loqui, Colloquium appellabant veteres, & est solenne Colloquium omnium Ordinum Regni, authoritate solius Regis, ad consulendum Statuendumque, de negotiis Regni indictum. Hæc Augusta vocis significatio, humiliores recipit. Ex Glossar. Spelman, pag. 449.

Parliamentum dixere Croylandenses Cœnobitæ sub temporibus Willielmi II. & Ingulphi Abbatis suas de rebus sui Monasterii Consultationes, ut testatur codex illic antique M. S. fol. 89. Et suas utique nostri hodie Jurisconsulti in Hospitiis fori, ut notissimum est.

Croylandensis libri hæc sunt verba —— Concessimus etiam tunc Serjentium nostræ Ecclesiæ *Semanno de Lek*; qui veniens coram Conventu, in nostro publico Parliamento, similiter juramentum præstitit, quod fidus & fidelis nobis existeret & Officium, &c. E quibus innuit privatas etiam Consultationes, dici Parliamenta, nam hoc publicum vocant. *Albertas Argentinus* vocem intelligit de omni concessu, etiam Militari: sic enim ille sub An. 1218. Cum olim (inquit) Milites Basilienses ad Torneamenta, hastiludia, & Parlamenta alia cum multitudine egredirentur, &c.

Et in antiquis scriptis Prædialibus occurrit mihi aliquando *Parlement Hill*, id est, Collis Parlamentarius, quod (ut reor) convenire hic olim solebant Pagenses aliquot, ad causas inter vicinos dirimendas; prout in Hibernia frequentes

quentes vidimus *the Parle and Parlinge Hill* nuncupatus.

Reperitur (fateor) vox antique in Canuti legibus; ſed è recentiore Interprete Anglo-Normanno, Latine data: Danis enim & Saxonibus peregrina vox.

Magni hujus Concilii Specimen inter Normannos, Saxones, Britannos quærunt Philologi. Britannos lepide ex illo Cæſaris, Lib. 5. Summa Imperii Bellique admini trandi Communi Concilio permiſſa eſt Caſſivilano, p. 87. Quid caſtrenſe hoc Conſilium ad Civile noſtrum? Quid confœderatarum copiarum adverſus hoſtem communem coactum confugium, ad Ordinum Regni ſolennes conceſſus? Audi Tacitum de Britannis---- Olim Regibus parebant; nunc per Principes factionibus & ſtudiis trahuntur; nec aliud adverſus validiſſimas gentes pro nobis utilius, quam quod in commune non conſulunt. Rarus duabus tribuſque Civitatibus ad propulſandum commune particulum, conventus; ita dum ſinguli pugnant, univerſi vincuntur.

In vita Agric. pag. 142. Vides in hiſce Conſiliis nec Regis adeſſe præſentiam, nec authoritatem: & convenire rarius duas vel tres Civitates faminaſque ut appareat veterum Germanorum & Lacedæmoniorum ritu non excluſas; Nam in Imperiis (inquit idem Tacitus) ſexum non diſcernunt, ſic Vaodicea Icenorum noſtrorum furens *Penthefileia*, quæ —— Romanos uno prælio peremit, belli adminiſtrat Impe-

Imperium. Hæc de Britannorum Conciliis.

Saxonummos, & Germanorum cognoſcitur. ——— De minoribus rebus (inquit Tacitus) Principes conſultant, de majoribus omnes. Ita tamen ut ea quoque quorum penes plebem arbitrium eſt apud Principes prætractentur. Res minores exponunt cauſas privatas & ad forum pertinentes, majores publicas. In celebrandis hiſce Conciliis, non coeunt niſi Luna novâ vel plenâ; nec indicto die (ne non liberi viderentur) ſed vel altero, vel tertio Conſidunt armati, concionemque & ſilentium moderantibus Sacerdotibus audiuntur vel Rex vel Princeps; vel prout cuique ætas, nobilitas, vel facundia, ſuadentes autem non jubentes. In ferendis ſuffragiis, fremitu aſpernunt quod diſplicet; & framearum concuſſu laudunt quod placet. Sic Germani veteres in Germaniâ, apud Tacitum; & Britaniam advecti, patrios ſine dubio ritus una advehunt, ſed fide imbuti Chriſtianâ, rigidiores ſenſim deponunt & Chriſtianorum induunt.

Conciliorum igitur duo poſthac genera: Eccleſiaſticum quod ab Apoſtolis inſtitutum, expediunt jam Archiepiſcopi, Epiſcopi, Abbates, Clerus; Præſentibus etiam ſæpius ipſo Rege, cum Magnatibus populique Senioribus: ſed de hoc non hic locus. Seculare, cui poſt Regem aderant Prælati antedicti & Aldermanni (alias Seniores atque Sapientes Regni) hoc eſt Duces, Comites, Proceres & Magiſtratus nonnulli, ut in voce *Aldermannus*, explicavimus.

Inas

Inas Rex Occidentalium Saxonum, qui floruit An. 712. leges suas condidit, ut ipse loquitur **mid Getheaht & mid lære Centredes Wines Fæder**, &c. Consilio (inquit) & documento Centredi patris mei, Hedda, & Erkenwoldi Episcoporum meorum omniumq; Aldermannorum meorum & seniorum Sapientum populi mei, magna etiam servorum Dei frequentiâ sufficit hoc unum exemplum admodum exprimendum omnium Conciliorum Anglo-Saxonum: Etiam licet nec in eisdem Episcoporum fiat mentio, nec Aldermannorum. Juxta enim seculi illius usum, comprehendi plerumque solent, vel in præfatione legum, vel in contextu, Sapientum vocabulo: Et hoc quidem desiderato, præsentes tamen intelliguntur omnes, ut ex Æthelstani legibus observatur, qui in Ecclesiasticis illic constitutionibus usum se refert Episcoporum consilio in secularibus vero edendis, nec secularium meminit, nec Episcoporum interfuisse tamen utrosque constat ô subscriptione quadam dicente. **Calle this wæs gesetted on tham miclan Synod**, &c. Decreta sunt hæc omnia in magna Synodo Gratelianâ cui Aderat Wilhelmus Archiepiscopus, & cum eo Nobiles omnes & Sapientes ab Æthelstano congregati.

Sed ut uberius dicam de personis in istiusmodi Concilio convocatis, occurrit primo nusquam me reperisse inter Saxones nostros plebi locum cui in Germania Tacitus potiorem tribuit. Qui in hac Regis Concilio memorantur, sunt ut vides Episcopi, Aldermanni, Seniores, sapientes

ſapientes Populi, & Servi Dei de Epiſcopis, ſatis notum. Aldermanni vox adeo generalis eſt, ut omnes comprehendat, qui vel dignitate præſunt vel officio: Regulos, Subregulos, Principes, Duces, Comites & Magiſtratus quoſlibet, ut in voce Aldermannus enarravimus.

Hoc autem loco de Comitibus intelligo & toparchis quod prætereat numerat ſeniores ſapientes Populi; qui Latine idem ſunt quod Aldermanni Saxonice.

Seniores ſapientes Populi, idem eſt Latine quod Aldermanni Saxonice, ut in verbo *Senior* referemus. Qui vero appellantur ſervi Dei, ſtrictius ego intelligo de Eccleſiaſticis, qui ſub hiſce ſeculis, peculiari iſto geſtiebant nomine eodemque veniunt incondendis Æthelſtani legibus Eccleſiaſticis, Cap. 3. Viris non tum conſultis ſecularibus: Et in Synodali Conciliabulo *Cloveſhovia*, Ann. Dom. DCCCXXIV, explicite ponuntur, Dei Servi, Presbyteri, Diaconi, Monachi. Ad hæc quæ diximus fidem faciunt Conciliorum plurium M. S. Chartarumque in eiſdem Confirmatarum ſubſcriptiones: in quibus præter Regem, & interdum Reginam, has invenimus: Ex parte Eccleſiaſticâ, paſſim Archiepiſcopos, Epiſcopos, Abbates; nonnunquam Abbatiſſas, Presbyteros, Monachos. Didaſcalum Dogmatiſtam. Ex parte laicâ, Regulos, Subregulos, Principes, Patricios, Aldermannos, Hertogenas, qui & alias Duces, alias Comites, Præfectos & interdum dictionis alicujus putâ Merciæ, Illafordas, (i. Dominos) Thanos etiam, qui & Miniſtros. Continentur

hi

hi quidem omnes (in Thanum excipias) sub Aldermannorum nomine, ut supra diximus, & qui in una Charta Aldermannus scribitur in alia Hertogan; in alia Dux, in alia Comes appellatur. Sic Ælfherus in Chartis Wigornensibus.

Excedo tenebris in crepusculum, sed lux adhuc malefida, Gulielmus I. qui a conquirendo, hoc est acquirendo Angliam, non a subigendo (ut plerique censent) dictus est Conquestor, terram totam inter Magnates suos sic disposuit, ut suum quisque Patrimonium de Rege teneret in Capite per servitium plerunque Baroniæ. Hinc Magnates, Barones Regis & Barones Regni nuncupantur, Regni etiam Capitanei, quod in Capite, id est, a Rege tenuere, & in librum *Domasdei* conscribuntur singuli, Patrimonia sua (Reservata ad alendum sui ipsius familiam, splendida portione) suis quisque clientibus (quos vulgo milites vocant) feodorum nomine dispartitur, & hi vicissim inter Tenentes suos & Colonos. Sic pars nulla Regni vel agrorum præter terras ipsius Regis, & quæ Deo data sunt in liberam eleemosynam, quin alicui Baronum erat subdita, cum é tenuræ ratione, tum & jurisdictionis privilegio. Superior enim quisque Dominus, Regulus agit, in suos Subditos & in rebus ad feodum suum pertinentibus ex ipso jure feodali, jus dicit, quod de Germanis olim notavit Tacitus: Agricolis (inquit) suis jus dicunt. Agricolas autem appellare censeo, qui agrariis coercentur legibus & servitiis.

Mirum

Mirum interea ſub his ſeculis, Dominorum in Vaſſallos Imperium, Vaſſallorum utique erga Dominos, amor & obſequium. Quod ex pertinacia Gerardi de Canvilla dignoſcatur, qui in magno Regni Concilio Anno 5 Ric. I. Northamptoniæ, celebrato, læſæ Regiæ Majeſtatis poſtulatus, reſpondit: ſe eſſe hominem (i. e. Vaſſallum feodalem) Comitis Johannis, & velle in Curia ſua jure ſtare.

Hinc feodalis Domini ex aſſenſu feodalium ſuorum Vaſſallorum (quos *Pares* feodi vocant & *Pares Curiæ* ſuæ) leges ferebant de rebus feodi ſui: Et Superiores quique de inferioribus.

Rex perinde qui totius Regni Dominus eſt ſupremus, regnumque univerſum, tam in Perſonis Baronum ſuorum, quam è ſubditorum ligeantiâ, ex jure Coronæ ſuæ ſubjectum habet, Conſilio & aſſenſu Baronum ſuorum leges olim impoſuit univerſo Regno; & conſentire inferior quiſque viſus eſt, in perſona Domini ſui Capitalis, prout hodie, per Procuratores Comitatus vel Burgi quos in Parlamentis *Knights and Burgeſſes* appellamus.

Convenire igitur ſolebant Barones Reges, prout opus, ter quotannis ad Aulam Regiam, id eſt, ad Natale Domini noſtri, ad Paſcham, & ad Pentecoſtem, prodireque tunc ſolebat Rex coronatus publicè, & cum Baronibus de Negotiis regni conſtituere. Sic Canutus Rex ſuas leges in Chriſti tulit Natalitiis. Edmundus Lib. Ramef. 109.

in Paſchatis feſto, Henricus I. Anno 1108. in Pentecoſtes. Sed & aliis quoque temporibus, ut fuit opus.

Habes morem veterem, quem mutaſſe ferunt Henricum I. Anno Regni ſui 16. Plebe ad Concilium Saresberienſe tunc accita. Hæc vulgaris opinio, quam typis primus ſparſit. Polydorus Virgilius, acceptam Subſequentes Chronographi. Nos ad Authoris illius ſeculi provocamus & vicini. Flor. Wigornenſis in An. Dom. 1116. (qui eſt 16 Henrici I.) ait Conventio Optimatum & Baronum totius Angliæ apud Sealesbiriam 14 Cal. Apr. facta eſt. *Eadmerus* de eodem ait 13 Kal. Apr. factus eſt Conventus Epiſcoporum Abbatum & Principum totius Regni apud *Serberiam*, cogente eos illuc Sanctione Regis. Nichil hic de plebe, nec in notis aliquibus aliis Authoribus vel illius ſeculi, vel alterius cujuſlibet; qui tam inſigne libertatis Privilegium, ſilentio (proculdubio) non tranſiiſſent. Enatum enim cum jam certo eſſet, paſſim prædicant inferiores.

Sed ad hoc reperitur audio neſcio quid in veteri quodam M. S. codice, Authoris, temporis, fidei incertæ— Communes (ſic plebem vocant) tunc vocatos. Rem qui amplectuntur ideo factam cenſent, ut Rex iſte Angligenus Anglos ſibi contra Normannos malefidos confirmaret.

Sed Vir acutiſſimus Gualterus Raleigh Lib. de Prærogativa Parliamentorum, Angliæ factum non opinatur ante 18 Hen. I. quod in

Anno

Anno 17 Regni ejus solius sui privati Concilii assensu tributum imposuit in unamquamque Hydam, (seu Carucatum) terræ ad collocandam filiam suam in Matrimonio. Et de eodem ait Huntingtonius—Geldis creberrimis & exactionibus variis Anglia compressa est. Ego Anonymum illum, eo reor deceptum, quod hoc Concilium coactum fuit ut ferunt (Wigornensis & Eadmerus) non consultandi gratia, vel statuendi, sed ut Magnates Angliæ fidelitatem præstarent & homagium Gulielmo filio Regis, quod Rex ipse dubios in Normania Casus subiturus esset.

Convocatus etiam ea Causa primores plebis verisimile est: nam submerso sub quinquennio postea Gulielmo Principe, Episcopos Comites Barones, & omnes qui alicujus videbantur esse momenti, (Neubrigensis verba sunt) Londinum vocat ad Concilium, fidem jam Matildi filiæ suæ juraturos.

Sic Concilium alterum habes illiusmodi, Parliamento nostro sat dissimile; Nam si pro Parliamentis hæc habueris, altiorem rei dabit originem Conquestor ipse, qui Anno Regni sui 19 Dom. nostri 1086. Mandavit ut Episcopi, Abbates Comites Barones Vicecomites cum suis Militibus (i. est Tenentibus in feodo militari) die Kal. Aug. sibi occurrunt Searesbiriæ. Quo cum venissent Milites illorum sibi fidelitatem contra omnes homines jurare coegit. Flor. Wigorn. in hoc Anno. Ludunt qui Parliamenta nostra in his quærunt.

Sine ut Sodes dicam, collegisse me centenas (reor Conciliorum edictiones tenoresque ipsos plurimorum) ab ingressu Gulielmi I. ad excessum Henrici III. existentium, nec in tanta multitudine, de plebe uspiam reperisse aliquid ni in his delituerit.

Gulielmus I. semel atque iterum ait se concessisse, &c. per Commune Consilium totius Regni. Char. Emendationum, p. 125. Et quod jamjam citavimus de Vicecomitibus & Militibus evocatis ad fidei vinculum.

Gulielmus junior ita pariter, & de Henrico I. lis sub judice.

Stephanus Rex in Octavis Paschæ ——— tenuit Concilium Northamptoniæ, cui præsidebant Eboracensis Episcopus Thurstanus, Episcopi, Abbates, Comites, Barones, Nobiles quique per Angliam. Continuat. Florentii, in Ann. 1138. pag. 519. aut addenda videtur & Conjunctio, aut tollenda commâ, legendumque Barones Nobiles, & sic nihil Scrupuli.

Sed Richardo I. (Hyerosolimis militante) Johannes Comes Moretonii, frater Regis, & Walterus Archiepiscopus Rothomagensis, & omnes Episcopi, & Comites, & Barones, & Cives Londonienses cum illis convenerunt in atrio Ecclesiæ S. Pauli. Et totius Concilii Judicio Willielmus Elyensis Episcopus a Regni & Cancellariæ regimine deponitur, arduaque alia peraguntur. Hoved. in Ann. 1191. pag.

pag. 701. & Epiſt. Hug. Covent. Epiſcopi, pag. 703. Hoc tumultuarium videtur Concilium (quod Conciliabulum vocant) non legitimum.

E crepuſculo jam in lucem veniamus, quam a tot viris doctis iſtud agitantibus argumentum, miror non intuitam; Johannes Rex haud dicam *Parliamentum*, (nam hoc nomen non tam emicuit) ſed *Communis Conſilii Regni* formam & coactionem perſpicuam dedit, Chartaque ſua (quam aliquando vidimus) Anno Regni ſui 17. ſtatuit obſervandum. Proferam ipſius verba, ſed primo recitandus eſt præcedens illic Articulus, qui ad ſequentium conducit explicationem.

——Nullum (inquit) Scutagium vel Auxilium ponam in Regno noſtro, niſi per Commune Conſilium Regni noſtri.

1. Niſi ad corpus noſtrum redimendum.

2. Et ad primogenitum filium noſtrum Militem faciendum.

3. Et ad primogenitam filiam noſtram ſemel Maritandam; Et ad hoc non fiat niſi rationabile Auxilium.

His dictis paulo inferius ait. —— Et ad habendum Commune Conſilium Regni de Auxiliis aſſidendis (aliter quam in tribus caſibus prædictis) & de Scutagiis aſſidendis, ſummoneri faciemus Archiepiſcopos, Abbates, Comites,

mites, & Majores Barones Regni, ſigillatim per litteras noſtras. Et præterea facimus ſummoneri in generali per Vicecomites & Ballivos noſtros, omnes alios qui in Capite Tenent de nobis, ad certum diem, ſcilicet ad terminum 40. dierum ad minus, & ad certum locum in omnibus literis Submonitionis illius, cauſam Summonitionis illius exponemus; & ſic facta Summonitione, negotium procedat ad diem aſſignatum, ſecundum Conſilium eorum, qui præſentes fuerint, quamvis non omnes Summoniti venerint.

Poſt ſuſceptionem Plebis in Comitia Parlamentaria ſenſim decerpitur faſtigioſa illa Magnatum poteſtas coercita, alias eorum in Tenentes imperio, & laxata, alias Plebis in eos ſervitute. Fit hoc ſtatutis plurimis, adeoque labefacta eſt ſuperbia Procerum ut adverſus Regem nemo ſuſcitare auſus eſt, novorum quidpiam ſi de Regno non ageretur. Sed ecce novus jam Leviathan graſſari cæpit Liberata jam ab imperio dominorum, offenſa ex quavis cauſa Plebs, quæ ad arma hactenus, abſque voluntate Dominorum nunquam convolant; jam non habentes quibus audiant in graviſſimas inſurgunt rebelliones, quod ne ſemel unquam factum eſt anterius.

Upon the whole I obſerve, That many *Records* and *Authorities* cited in this Work are to be found in Mr. *Petyt*'s Treatiſe; and that the Author of it, (as I am informed by ſuch as cannot but know it to be ſo) never *ſaw* above one or two of the *Original Records* he hath cited: And therefore it is much to be ſuſpected he had both the *Deſign* and *Materials* of his Book given him.

Omitted in the

Animadverſions

p.25,26,27. De Term. Hillar. 39 Hen. 3. Penes Remem. Regis in Scaccario.

THE City of London *being charged with a Tallage, the Common Council diſpute, Whether it were* Tallagium *or* Auxilium, *which is there meant of a Voluntary Aid, not due upon the account of any of their Houſes, being of the King's Demeaſn; though indeed 'tis then ſhewn that they had ſeveral times before been Talliated.*

This explains that part of the Charter, **Simili modo fiat de Auxiliis de Civitate London**; *that is, as in all ſuch Caſes beſides thoſe excepted,* **Eſcuage** *or* **Tallage** *ſhould not be raiſed but by a Common Council of the Kingdom; that is, of all the Perſons concerned to pay. So for the City of* London, *unleſs the Aid were ordered in* **Common Council**, *wherein they, and all other Tenents in chief were aſſembled, none ſhould be laid upon any Citizens, but by the conſent of their own Common Council; and if the Ordinance were only in general terms, that all the Kings Demeaſns ſhould be Talliated, the*

Proportions

Proportions payable there ſhould be agreed by the Common Council of the City, according to that Record 11 Hen. III. *Aſſedimus Auxilium Efficax in Civitate noſtra London, ita quod ſingulos tam Majores, quam Minores, de voluntate omnium Baronum noſtrorum Civitatis ejuſdem per ſe Talliavimus & ideo providimus ſimul Auxilium per omnes Civitates noſtras, Burgos & Dominica noſtra aſſidere.*

This **per ſe Talliavimus** *was a Talliating* **per Capita**; *for when the Common Council refuſed to give ſuch a Sum in Groſs as the King demanded, then the King was put to have it Collected of every Head, that is, according to the Faculty of every Soccage Tenent of his Demeaſn, as appears by the Record,* 39 *Hen.* III. *meaning that cited before in his Margent.*

What our Writer means by theſe three obſcure *Paragraphs*, I do not well underſtand; unleſs it be that *Cities* and *Burghs* were not Taxed, or Aſſeſſed toward any Payments, but by their own Common Councils; or that they, as part of the Common Council of the Land, Taxed themſelves. For what he ſays, That after a Tax or Aid was impoſed upon Cities and Burghs, the Inhabitants met to proportion it, ſo as it might be paid with as much equality as could be; if they would, they always did it, and this ſenſe which he puts upon the Record, 11 *Hen.* III. is nothing to his purpoſe.

I could not find this Record.

But

But he having Grounded theſe three dark Paragraphs, and ſomewhat more that follows, upon the Record which he cites in his Margin, pag. 26. not mentioning any thing of the Record it ſelf, I ſhall here publiſh the whole, and give him leave to make the beſt of it.

REX

REX Mand. Baron. quod Anno Regni ſui xxxix. poſt redit. ſuum de Vaſcon. poſt feſtum Sancti Hillarii apud Merton proviſum fuit per Conſilium Regis quod Talliaret Dominica ſua per Angliam pro gravibus expenſis factis dum fuit in partibus tranſmarinis. Et cum Cives London. vocati eſſent coram Rege & Conſilio ſuo apud Merton ad Talliandum prædictam Civitatem venit Radulphus Hardell tunc Major Civitatis London cum pluribus aliis de eadem Civitate. Et Rex petebat ab eis tria mill. Merc. nomine Tall. & illi habito Conſilio cum Concivibus ſuis venerunt ibidem & optulerunt Regi duo mill. Merc. nomine Auxilii & dixerunt præciſe plus non poterunt dare, nec darent. Et tunc Rex de Conſilio ſuo miſit Phil. Lovell Theſ. ſuum, Henric. de Bathon. Petrum de Rivall Roger. de Turkelby apud Sanctum Martinum ad recipiend. finem trium mill. Merc. pro Tall. ſi intrare vellent ſicut eis prius dictum fuit, & ſi nollent tunc aſſident. Tall. illud in Civitate per Capita. Et omnes prædicti ibidem venerunt. Et cum prædicti Cives noluiſſent intrare finem prædicti. trium mill. Merc. prædicti Theſ. & alii voluerint aſſidere illud Tall. per Capita & quod quilibet juraret catalla alterius. Et cum ipſi noluiſſent facere Sacrament. nec etiam dicere in fide qua Regi tenebantur de Catall. ſingulorum, dicti Theſ. & alii inde receſſerunt infecto Negotio illo. Poſtea venerunt prædicti Cives coram Rege apud Weſtm. die Dominica proxima poſt Purif. beate Marie Virgin. anno prædicto & coram Conſilio ſuo, (viz.) R. Com. Cornub. fratre Regis R. de Clare Com. Glouc. & Hertf. A Wynton Epiſcopo W. Wigorn. Epiſcopo & aliis de Conſilio

Term Hillar. 39 Hen. 3. Penes Remem. Regis in Scar. Pro Rege tangen. Cives Lond.

St. Martins Le Grand in London.

Consilio suo. Et cum contentio esset utrum hoc dici debet Tall. vel Auxilium Rex Scrutari fecit rotulos suos utrum ipsi aliquid Dederunt Regi vel antecessoribus suis nomine Tall. Et Scrutatis Rotulis compertum est tam in rotul. de Scac. quam de Cancellar. quod tempore Domini Johannis Patris Domini Regis anno ejusdem Johannis sexto decimo Talliati fuerunt prædicti. Cives London ad duo mill. Marc. ad relaxationem interdicti & anno Regni Regis septimo Talliati fuer. ad mill. Libr. Et anno xxvi. dederunt mill. Libr. pro Tall. ea vice. Et anno xxix. Tall. fuerunt ad duo mill. Merc. Et anno xxxiii. ad mill. Libr. Et anno xxxvii. dederunt mill. Merc. & xx. Merc. auri pro Tall. Postea in Crastin. (scilicet) die Lune proxima post festum Pur. beat. Marie Virgin. venerunt prædicti. Radulphus Hardell Major & Cives & recognover. se esse Talliabiles & dederunt Regi tria mill. Merc. pro Tall. Test. apud Westm. xiv. die Februarii anno, &c. Bre'. est in for. Mar.

Examinat.

How

How it appear by this *Record* that the *Common Council* of *London* Taxed the City, or that the City was not Taxed without their own conſent, let the Reader judge: it ſeems to be plain by the Record, that the King by the advice of his Privy Council Taxed it.

If we look back into the Reign of *Hen.* II. we ſhall ſee how Cities and Burghs were Taxed in his Reign. *Plurimum Intereſt*, ſays the Black Book in the Exchequer, (Dedicated to that King) *ſi Donum vel Auxilium Civitatis per ſingula Capita Commorantium in eâ à Juſticiariis Conſtituatur. Vel ſi Cives ſummam aliquam, quæ principe digna videatur Juſticiariis offerant, & ab eis ſuſcipiatur. Diſpar enim in his Duobus, Modus Coercionis eſt.*

Penes Camer. Fol. 41. a.

How Taxes were Levied in Cities and Burghs in Hen. II. his Reign.

The Uſage was then, that either the Kings Juſtices Taxed the Cities and Burghs, or the Citizens and Burgeſſes offered a Sum to the Juſtices, which oft times was accepted: In both theſe Caſes there was a different way of forcing the Payment of it; and this *Gift* or *Aid* of the Citizens, is in this Book otherwiſe called *Conventio*, or *Sponte Oblatum*, a Bargain, or Compoſition with the Juſtices for the Tax, or a Benevolence in ſtead of it.

This makes the meaning of the Record more plain, and ſhews the Reaſon why the Mayor and Citizens of *London* refuſed at firſt to pay 3000 Marks, and freely offered 2000; and why there aroſe a Contention whether what

what was demanded, was to be called an Impoſition, or Voluntary Gift. And likewiſe ſhews the reaſon why *London*, and other Cities and Burghs, according to the Law of King *John*'s Charter, were to be Aſſeſſed and Taxed by the Common Council of the Kingdom, as well as the Kingdom it ſelf: for doubtleſs the Kingdom had been Taxed by our antient Kings and their Privy Council only before the granting of that Law in King *John*'s Charter; otherwiſe what can the meaning of thoſe words be, *Nullum Scutagium vel Auxilium ponam in Regno noſtro, niſi per Commune Concilium Regni noſtri*, (unleſs in the three excepted Caſes) *&c.* if they were not intended to reſtrain the King from Levying of publick Taxes, without publick Conſent?

The reaſon of this Article in King *John*'s Charter, is Argument ſufficient to prove, That the Common Council mentioned in it, was the Great and Common Council of the Kingdom to all intents and purpoſes, if there had been no other.

Rot. 11 Hen. 3. M. 19. The Record above-cited concerning London, Co. 2. Inſtit. Fol. 531.

For *Hen.* III. ſeveral times after this Charter was granted, and *Edw.* I. Taxed their Demeaſns through *England*, though not the whole Kingdom, by Advice and Conſent of their Privy Councils only, until the Statute *De Tallagio non Concedendo* was made, 34 *Edw.* I. And both *Richard* the Firſt and King *John* had Taxed the whole Kingdom without common aſſent, before the Grant of *Magna Charta*.

Richard

Richard the First, Ann. 1198. in the Ninth year of his Reign, *Accepit de unâquaque Carucata Terræ totius Angliæ V. Solidos de* Gurtio *ad Quos Colligendos Misit Idem Rex per singulos Comitatus Angl. unum Clericum, & etiam Militem, Qui cum Vicecom. Comitatus ad quem Mittebantur, & Legalibus Militibus ad hoc electis præstito Juramento quod fideliter exequerentur Negotium Regis, fecerunt venire coram se senescallos Baron. istius Comitatus, & de qualibet Villa Dominum vel Ballivum Villæ, & præpositum cum quatuor legal. hominibus Villæ, sive* (a) *Liberis, sive* (b) *Rusticis*, who were to swear how many plough Lands there were in every Town. *Et super singula Carucarum Waunagia ponebant, ex* Præcepto Regis, *primo duos Solidos, postea 3 Solidos, &c. Ad pœnam vero Juratorum qui aliquid contra Juramentum eorum Celaverint in hoc Negotio, Statutum erat, quod quicunque Rusticus Convictus fuerit de perjurio, daret Domino meliorem Bovem de Carucâ suâ, atque insuper responderet de proprio ad opus Domini Regis tantum pecuniæ quantum fuisset declaratum per suum perjurium fuisse celatum. Si vero Liber homo Convictus fuisset, esset in Misericordia Regis, & insuper refunderet sicut Rusticus. Libera Feoda Ecclesiarum Parochialium, de hoc* Tallagio *Excipiebantur.*

Hoved. f. 442. b. n. 50. f 443. a. n. 10. 20.

(a) Tenents in Military Service, or Gentlemen.
(b) Soccagers, Possessors or Freeholders in Soccage only.

The

The full Form of ſetting and Levying this Tax is ſet forth in this Relation of *Hoveden*, who lived at the time, and was a Man of Imployment under King *Richard*; and 'tis obſervable, he uſeth both the word *Auxilium* and *Tallagium* for this very ſame Tax. But *Auxilium* was the moſt general word uſed for all ſorts of Taxes and Impoſitions, before the Statute *De Tallagio non Concedendo*, as may be obſerved from the Records before cited.

Paris f. 209. n. 20. A.D. 1203. King *John* took a ſeventh part of all Moveables *without common aſſent*; and another time a thirteenth, the Great Men, and Clergy grumbling at it.

Clauſ.

Clauſ. 17 Joh. M. 21 Dorſo.

HÆC eſt Conventio inter Dominum Johannem Regem Angliæ ex una parte & Robertum filium Walteri Mareſchal Exercitus Dei & Sanctæ Eccleſiæ in Anglia, & Ricardum Com. de Clare Galfridum Com. Eſſex & Glouc. Rogerum Bygod Com. Norff. & Suffolch Saherum Com. Wynton Robertum Com. Oxon. H. Com. Heref. & Barones Subſcriptos ſcilicet. W. Mariſc. juniorem Euſtach. de Vaſcy Will. de Mobray Johannem fil. Roberti Rogerum de Monte Begon. Will. de Lanvalay & alios Comites & Barones & liberos homines totius Regni ex altera parte Videlicet, quod ipſi Com. & Barones & alii præſcripti tenebunt Civitatem London de Ballivo Domini Regis Salvis interim Domino Regi firmis redditibus & claris debitis ſuis uſque ad aſſumptionem beatæ Mariæ, Anno, &c. decimo ſeptimo. Et Dominus Cant. tenebit ſimiliter de Ballivo Domini Regis Turrim London uſque ad prædictum terminum ſalvis Civitati London libertatibus ſuis & liberis conſuetudinibus ſuis, & ſalvo cuilibet jure ſuo in Cuſtodia Turris London. Et ita quod interim non ponat Dominus Rex munitionem vel vires alias in Civitate prædicta vel in Turri London. Fiant etiam infra prædictum terminum Sacramenta per totam Angliam viginti quinque Baronibus ſicut continetur in Charta de libertatibus & ſecuritate Regno conceſſis vel Attornatis viginti quinque Baron. ſicut continetur N. 1. Animad. p. 9.

in litteris de duodeçim militibus eligendis ad defend. malas consuetudines de Foreſtis & aliis. Et præterea infra eundem terminum omnia quæ Com. & Barones & alii liberi homines petunt à Domino Rege quæ ipſe dixerit eſſe reddenda vel quæ per viginti quinque Barones aut per majorem partem eorum judicata fuérint eſſe reddenda reddantur ſecundam formám prædictæ Chartæ. Et ſi hæc facta fuerint vel per Dominum Regem non ſteterit quo minus iſta facta fuerint infra prædictum terminum tum Civitas & Turris London ad eundem terminum ſtatim reddantur Domino Regi Salvis prædictæ Civitati libertatibus & liberis conſuetudinibus ſuis ſicut præſcriptum eſt. Et ſi hæc facta non fuerint & per Dominum Regem ſteterit quod iſta non fiant infra prædictum terminum Barones tenebunt Civitatem prædictam & Dominus Archiepiſcopus Turrim London donec prædicta compleantur. Et interim omnes ex utraque parte recuperabunt terras Caſtra & villas quas habuerunt in initio Gwerræ ortæ inter Dominum Regem & Barones.

Pati

Pat. 42 *H.* 3. *M.* 4.

HEnr. par la Grace Deu Rei Dengl. &c. a touz cens, &c. ſachiez qe pur le profic. de noſtr. Reaume e alec requeſte *de nos hanz homes e prodeſhomes* e du comm. de noſtr. Reaume otregames qe Vintequatre de nos hommes enſent poer qe qe tout ce gil ordeneraient del eſtat de noſtre Reaume fuſt fer in e eſtable e ce fennes jurrer en noſtre alme e donames de ce nos Lettres onertes Et ce meeſmes jurrar. Eadward noſtr. frenz einzne e de ce dona ſes Lettres onertes les quens Vintequatre deſus nomez eſſurens quatre as quens quatre il donerent leur poer de eſſire noſtr. conſeil des *prodeſhomes* de noſtre terre le quel conſeil. Nos annu promis & promettoms craire al adreſcement e al amendement de toutes les beſoignes qe a par tregnent a nos e a noſtre Reaume. Et nos Voloms qe la nant dit conſeil on la greinure partie puiſſent eſſire prode home on prodeſhomes qe ſonent en lui de celi on de cens qui defanderunt. Et nos anez un ferin e eſtable quage lanant dit conſeil on la Gremeure partie fera. E comandum fermement qe touz nos feans e nos homes anſi laient eſoient tenuz fermement garder touz les eſtabliſſemenz les quens il ferunt al honour de den e noſtr. foi e an profiſt de noſtre Reaume. Et en teſmoign de ceſte choſe nos annu fet menere noſtre ſeel a ceſte preſente Lettre Ceſte choſe fu fete a Lundr. le dun

N. 2. p. 42.

anige prochein apres la gaule le haut en lan de noſtre coronnement quarante ſecund. Ceſte Lettre eſt doublee, e linere al Cuhte le Mareſcal.

Par le Roi & ſui Conſeil.

For the better underſtanding of this Record, ſee the Anſwer, p. 199, 200, &c. where by the Hiſtory of that time the true ſenſe and import of it is made out.

Rot. Pat. 6 Jo. M. 2. Dorſo.

REX, &c. *Vicecom. Rotel. &c. Scias, quod* N. 3. *proviſum eſt communi aſſenſu* Archiepiſcoporum, Epiſcoporum, Comitum, Baronum, & omnium fidelium *noſtrorum Angl. quod* Novem Milites *per totam Angliam invenient* Decimum Militem *bene paratum equis & armis ad defenſionem Regni noſtri, & quod illi* Novem Milites *invenient decimo Militi qualibet die* ij s. *ad liberationem ſuam, & ideo tibi præcipimus quod ſicut teipſum & omnia tua diligis provideas quod* Decimi Milites *de Balliva tua ſint apud Lond. a die Paſch. in tres ſeptimanas bene parati equis & armis cum liberationibus ſuis ſicut prædictum eſt parati ire in ſervitium noſtrum quo præceperimus & exiſtere in ſervitio noſtro ad defenſionem Regni noſtri quantum opus fuerit. Proviſum eſt etiam quod ſi alienigene in terram noſtram venerint omnes unanimiter eis occurrunt cum forcia & armis ſine aliqua occaſione & dilatione auditis rumoribus de eorum adventu, & ſi quis* Miles *vel* Serviens *vel alius* Terram Tenens *inventus fuerit qui ſe inde retraxerit dummodo tanta non fuerit gravatus infirmitate quod illuc venire non poſſit ipſe & heredes ſui imperpetuum exheredebantur & feodum ſuum remanebit* Domino *fundi ad faciend. inde voluntatem ſuam. Ita quod exheredatus vel heredes ſui nunquam inde aliquam habeat recuperationem. Si quis vero* Milites Servientes *vel alii qui* terram non habent *inventi fuerint qui ſe ſimiliter retraxerint, ipſi &*

heredes ſui **ſervi** *fient imperpetuum reddendo ſingulis annis iiii d. de capitibus ſuis nec pro paupertate omittant ad prædictum negotium venire cum illud audierint quia ex quo ad exercitum venerint providebitur unde ſufficienter in ſervitio noſtro poterunt ſuſtentari. Si vero Vic. vel Ballivos vel Prepoſitos illos qui ſe retraxerunt nob. per bre. vel per ſcriptum, vel viva voce non oſtenderint dict. Vic. vel Ball. vel Præpoſit. remanebit in miſericordia noſtra* **de Vita & Membris.** *Et ideo tibi præcipimus quod ſub feſtinatione hac omnia proclamari facias in foris per totam Ballivam tuam & in Mercatis & Nundinis & alibi & ita te de negotio illo faciendo intromittas quod ad te pro defectu tui capere non deheamus, & tu ipſe ſis apud London ad præfatum terminum vel aliquem diſcretum ex parte tua mittas & facias tunc nob. ſcire nomina decimorum Militum, Et habeas ibi hoc bre. T. meipſo apud Winton tertio die Apr.*

Any Man that reads this Record cannot but believe the Nine Knights, and the Tenth alſo which they were to find, were all Tenents in Military Service: for beſides that they were ſuch as had their Horſe and Arms ready, the Tenth Knight had good Pay or Wages allowed him; Two Shillings a day, in the Sixth of King *John*, *Anno Dom.* 1205. 465 years ſince, was as much then as Thirty Shillings a day now; too great an allowance for an ordinary Freeholder.

Who in caſe of Foreign Invaſion were to appear in Arms for the Defence of the Kingdom, under pain of forfeiture of their Lands

to

to their Lord of whom they held, without hopes of recovery by them or their Heirs.

The Conſtituent parts of this Great Council mentioned in this Record are obſervable, which were the Archbiſhops, Biſhops, Earls, Barons, *& omnes fideles noſtri Angliæ*, which the Tenents in Capite, the *omnes alii qui de nobis Tenent in Capite*, according to the great Charter granted afterwards in the Seventeenth of his Reign.

See more in the Anſwer, p. 181, 183.

EBORSCR.

Carta Domini R. Ebor. Archiepiſcopo de Militibus ſuis fefatis.

E Libro Rub. in Scaccario.

AMantiſſimo Domino *ſuo H. Dei gratia Rex Angl. & Duc. Norman. & Aquita. & Com. Andegau. Suus Rog. eadem gratia Ebor. Archiep. Apoſtolic. ſedis legatus, Salutem. Precepit dignitas veſtra omnibus* fidelibus *noſtris Clericis & laicis qui de vobis Tenent in Capite in Eborſcr'. ut mandet vobis per literas ſuas extra Sigill. pendentes quot Milites fefatos quiſque hanc de veteri fefamento de tempore Reg. H. avi veſtri* 1. *de die & anno quo ipſe fuit vivus & mortuus & quot habeat de novo fefamento fefatos poſt mortem bonæ memoriæ ~~avi veſtri ejuſdem~~. Et quot feod. Milit. ſunt ſuper* Dominium *uniuſcujuſque & omnium illorum nomina tam de novo fefamento quam de veteri fefatorum ſunt in illo brevi ſcripta quia vultis, quod ſi aliqui ibi ſunt qui nondum fecerunt vob.* ligantiam *& quorum nomina non ſunt ſcripta in Rotulo veſtro quæ infra Dominicam primam Quadrageſimæ ligantiam vobis faciant, Quorum ego unus juſſioni veſtro ~~per omnia ſubjectus cum omni~~ diligentia inveſtigavi in* tenemento *meo prout brevitas temporis paſſa eſt, & præſenti ſcripto vob. Domino meo ſignifico.* Imprimis, *ergo Sciatis Domino quod ſuper* Dominium *Archiepiſcopatus Eborac. nullum feod. eſt Milit. cum tot habemus fefatos Milites per quos acquietavimus omne ſervitium quod vobis debemus ſicut & præceſſores noſtri fecerunt*

cerunt & plures etiam habemus quam vobis debeamus ſicut ex præſenti ſubſcripto re cognoſcere poteritis, Anteceſſores enim noſtri non pro neceſſitate ſervitii quod debent Set quia cognatis & ſervientibus ſuis providere volebant, plures quam debebant Regi feodaverunt.

Nomina autem Feſatorum de Tempore Reg. H. hæc ſunt.

WIllielmus Com. Albemarlie Tenet Feodum trium Militum.

Hen. de Laci ii. Milit.

Rog. de Molbrai quartam partem Milit.

Hereb. filius Hereb. iii. Milit.

Gileb. filius Nigell. ii. Milit.

Paganus de Lauda iii. Milit.

Malg. fil. Hug. i. Milit.

Ric. fil. Hug. i. Milit.

Will. de Bella-aqua i. Milit,

Rob. Morin ii. Milit.

Gileb. filius Herberti ii. Milit.

Hug. de Muſcham ii. Milit.

Walter

Walter de Danecurt ii. Milit.

Rob. Manſel i. Milit.

Rob. fil. fil. Wiard dim. Milit.

Petrus de Periton dim. Milit.

Hugo de Verli iiii. Milit.

Will. Chokerel i. Milit.

Thom. de Everhinham ii. Milit. & dim.

Sim. Wahart i. Milit.

Rad. de Novewica dim. Milit.

Rob. Poher dim. Milit.

Walter de Deuton dim. partem Milit.

Rob. fil. Hugon quartam partem Milit.

Will. de Lubbenhon dim. Milit.

Alex. de Nuvebi quatuor partes dim. Milit.

Hereb. de Merkinton quartam partem Milit.

Petrus de Belingee i. Milit.

Oliverus Angevinus i. Milit.

Will. de Panton i. Milit.

Thom. filius Auberti quartam partem Milit.

Aliz. de Moleſcrot quartam partem Milit.

Thom. fil. Hervei i. Milit.

Benedictus de Sculetot octavam partem Milit.

Berardus de Cotingeh. quartam partem Milit.

Leuredus xiii. part. Milit.

Joh. de Melſa viii. partem Milit.

Joh. quartam partem Milit.

Serlo de Pouel tertiam partem Milit.

Poſt Mortem Vero Regis H. Fefati ſunt.

Petrus Pincerum de feod. dim. Milit.

Petrus Cam. de viceſima parte Milit.

Galfr. de Burton de xii. parte Milit.

Gervaſius de Bretton de iii. parte Milit.

Et cum Domino ex his sunt quidam a quibus plus servitii exhibeo quam ipsi modo faciant alii vero destinati quædam quæ ad mensam Archiepiscopi & Dominium & non ad ipsos pertinere dicuntur Rogero Supplicitur ne in scripto isto mihi vel Successoribus meis nocere possit, quominus jus Ecclesiæ recuperare possimus vel retinere valeat Dominus meus. Et præter prædictos Milites.

Turstanus de Lethampton feod. dim. Milit.

Gileb. de Mineres tertiam partem Milit.

Werri de Marinis tertiam partem Milit.

Will. de Scuras dim. partem Milit.

Will. Palefrei i. Milit.

Will. de Bella-aqua & Ric. de Crokton quartam partem Milit.

By this Record the meaning of *Vetus & Novum Feoffamentum* is very apparent, that it was called so in respect of time only, and not in respect of the Original Feudataries, or their Sub-Feudataries, or *Tenents in Capite*, and Tenents by Meain Tenure in Military Service.

By it also may be discovered the import of the King's Writ issued to his *Tenents in Capite*, and the End or Design of it. If any Man receives not satisfaction from this, and that other Record in the Adimadversions, he may see an hundred more in the Red Book in the Exchequer.

FINIS.